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RECORD

United States Court of Appeals

FOR THE EIGHTH CIRCUIT.

No. 15,519.

CIVIL.

BENJAMIN S. MESIROW, TRUSTEE UNDER TRUST AGREEMENT KNOWN AS TRUST No. 140, IN BEHALF OF ALL BENEFICIARIES OF HIS TRUST, NAMELY, J. LEE HACKETT CO., CHARLES J. GREEN, AND EARLE HART WOODWORKING MACHINE CO.,
Appellant,

vs.

JEROME F. DUGGAN, TRUSTEE OF NATIONAL AIRCRAFT CORPORATION, SUBSIDIARY DEBTOR, *Appellee.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI.

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[fol. 1] IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

IN RE CHRISTOPHER ENGINEERING COMPANY, Debtor, NATIONAL AIRCRAFT CORPORATION, Subsidiary Debtor	In Reorganization No. 10947 Div. 1

(Petition of Benjamin S. Mesirow As Trustee under Trust No. 140 for an Order Decreeing Title to Certain Real Estate to Be Vested in Said Petitioner, for Return of Certain Moneys, for an Accounting, and for Other Relief.)

TO THE HONORABLE GEORGE H. MOORE,
ONE OF THE JUDGES OF SAID COURT:

Now comes Benjamin S. Mesirow, Trustee under Trust Agreement known as Trust No. 140, and respectfully represents and states unto this Honorable Court as follows:

1. That on January 21, 1944, an involuntary Petition in Bankruptcy was filed in the District Court of the United States, for the Southern District of Indiana, Indianapolis Division, Cause No. 9401 in Bankruptcy, to adjudge National Aircraft Corporation, an Indiana corporation, a bankrupt within the purview of the Acts of Congress Relating to Bankruptcy. That on, to wit, February 7, 1944, the said National Aircraft Corporation was duly adjudged a bankrupt by the aforedescribed Court and an Order of General Reference was entered referring the said cause to the Honorable Carl Wilde as Referee in Bankruptcy, Indianapolis, Indiana.

2. That on February 8, 1944, in the aforedescribed pro-
[fol. 2] ceedings, James C. Sansberry was duly appointed Receiver in Bankruptcy of said National Aircraft Cor-

poration and of its assets, and on the said date said Receiver duly qualified and shortly thereafter took possession of the said Bankrupt's assets.

3. That on March 13, 1944, a first meeting of creditors of National Aircraft Corporation was called and held, pursuant to the Bankruptcy Act, before the aforesaid Referee in Bankruptcy; that at said meeting James C. Sansberry was duly appointed Trustee in Bankruptcy of National Aircraft Corporation, and thereafter said James C. Sansberry duly qualified as Trustee by filing his bond.

4. That on February 28, 1944, in said proceedings, Joseph Fihe of Elwood, Indiana, and Mark G. Hoss of Indianapolis, Indiana, were duly appointed appraisers to appraise the real and personal property belonging to the said National Aircraft Corporation, and on March 22, 1944, said appraisers filed their report with the Court. In their report said appraisers valued the property hereinafter described in Paragraph 5 of this Petition, being all of the real property belonging to said National Aircraft Corporation, at $23,000.00; that the said appraisers valued all the personal property of the Bankrupt, which consisted of tools, dies, jigs, furniture, fixtures, machinery, raw materials, work in process, finished products, and all other tangible personal property, at $24,053.50.

5. That on, to wit, March 21, 1944, the said Trustee in Bankruptcy filed his petition for the sale of the real and personal property belonging to said National Aircraft Corporation. The said real estate is legally described as follows:

Commencing at a point 173.2 feet West of a point in the West side of 9th Street, which is 926 feet North of the [fol. 3] North line of North "D" Street, all in the City of Elwood, Indiana; thence West 112 feet; thence North parallel wth the West line of said 9th Street, 284 feet; thence East 86.2 feet to the Southerly side of the P. C. C. & St. L. R. R. right-of-ways; thence Southeasterly on and along said right-of-way; line 35 feet to a point due North of the place of beginning; thence South 259.8 feet to the place of beginning.

And also, commencing at a point in the West side of 9th Street, 416 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; thence West 173.2 feet; thence North parallel with the West side of said 9th Street, 769.8 feet to the Southerly side of the P. C. C. & St. L. R. R. Company right-of-way; thence Southeasterly on and along said right-of-way line 236 feet to the West line of said 9th Street; thence South on and along the West side of said 9th Street, 608 feet to the place of beginning.

Both parcels being part of Section Nine (9), Township Twenty-one (21) North of Range Six (6) East, and excepting therefrom the right-of-way of the P. C. C. & St. L. R. R. Company upon and along the West side of said real estate, in Madison County, Indiana.

6. That on March 21, 1944, the Court entered an Order calling a meeting of the creditors of National Aircraft Corporation for April 4, 1944, to consider the Trustee's Petition for leave to sell said real estate and personal property. On April 4, 1944, a meeting of the creditors of National Aircraft Corporation was held pursuant to said notice to consider the Trustee's petition for an order of sale. No objection was made to the entry of an order of sale. The Court, on April 6, 1944, entered an Order directing said James C. Sansberry, as Trustee in Bankruptcy of National Aircraft Corporation, to sell the real and personal property of National Aircraft Corporation on April 20, 1944, at 9:30 a. m. Said Trustee was authorized to employ an auctioneer and to publicize said sale.

7. That pursuant to the order of sale entered on April 6, 1944, James C. Sansberry, Trustee in Bankruptcy of National Aircraft Corporation, employed an auctioneer [fol. 4] and made intense preparations for the sale. The said sale was widely advertised in newspapers not only having a general circulation in the State of Indiana, but was also advertised in the Chicago Daily Tribune and the Chicago Daily News, daily newspapers having large circulations in Chicago, Illinois, and its entire metropolitan area. In addition, the auctioneer sent circulars describing said

sale to approximately 3,700 prospective purchasers. The sale itself was attended by 300 to 400 prospective purchasers.

8. That the said real estate hereinabove described was sold at said public sale, after competitive bidding, to Charles Green for the sum of $18,750.00, said Charles Green having made the highest offer for said property at said sale. On April 21, 1944, the said Trustee filed his Report of Sale with said Referee and on May 2, 1944, an Order was entered by the Honorable Carl Wilde, Referee in Bankruptcy of National Aircraft Corporation, approving and confirming the sale of the aforedescribed real property to said Charles Green of Chicago, Illinois, for the sum of $18,750.00; that the tangible personal property of National Aircraft Corporation hereinabove described was sold for $36,565.00 at said sale; that although the appraised valuation of the real and tangible property was approximately $47,000.00, the said property brought at said sale a total price of approximately $55,315.00.

9. That on April 21, 1944, the said Trustee in Bankruptcy of National Aircraft Corporation filed his Report of Sale and on said date an Order was entered by the Referee setting the matter of approval of the sale for hearing on April 25, 1944; that on April 25, 1944, the hearing was continued to May 2, 1944, and again to May 3, 1944. On May 3, 1944, an Order was entered by the Referee [fol. 5] approving and confirming said sales made by James C. Sansberry, Trustee in Bankruptcy of National Aircraft Corporation, including the sale of said real estate to Charles Green. The personal property of the said Bankrupt was sold in numerous lots to numerous different purchasers and all of said sales were approved.

10. Within a few days after said sale of said real property to Charles Green, said Sansberry as Trustee in Bankruptcy of National Aircraft Corporation furnished to said Benjamin S. Mesirow, Petitioner, an abstract of title to the above described real estate; that said abstract disclosed that National Aircraft Corporation had good title to said real property but as the said abstract did not disclose fully

the bankruptcy proceedings relating to National Aircraft Corporation, Cause Number 9401, said Benjamin S. Mesirow requested said Sansberry to furnish him with a supplemental or later date abstract showing all of the orders and proceedings in said Cause Number 9401 and particularly showing the Trustee's Report of Sale relating to the sale of the above described real estate to said Charles Green and showing the Order of the Court in said Cause Number 9401 approving and confirming the said sale and approving and confirming Trustee's report of Sale to said Charles Green and authorizing the said Trustee to deliver said real estate to the purchaser and to execute such instruments as may be necessary to evidence the transfer of title thereto; that said supplemental or later date abstract was furnished by said Sansberry to the Petitioner and showed that the Court in said Cause Number 9401 in Bankruptcy had approved and confirmed the Trustee's Report of Sale of said real estate to said Charles Green and had authorized the Trustee to receive the purchase price, to deliver the property, and to execute such instruments as were necessary to evidence the transfer of [fol. 6] the title thereto. Whereupon, after examination of said abstracts, both original and supplemental, by the Petitioner, said Charles J. Green, purchaser of said real estate hereinafter described, paid the purchase price therefor, to wit, $18,750.00 to said Sansberry, Trustee in Bankruptcy of National Aircraft Corporation and directed said Trustee to execute and deliver the Trustee's deed to said property to Petitioner, as Trustee under trust agreement known as Trust Number 140 of Cook County, State of Illinois; that said Trustee, pursuant to the order of the court in said Indiana proceedings, did execute and deliver his Trustee's Deed to the said property to the Petitioner; that Petitioner promptly recorded the said Trustee's Deed with the Recorder of Deeds of Madison County, Indiana, and took possession of said property. None of the abstracts disclosed any interest in said property by Jerome F. Duggan, Reorganization Trustee of Christopher Engineering Company herein, who now claims some interest in said property as hereinafter set forth, nor did Petitioner or Charles J. Green know or learn until long after the sale

was consummated that said Duggan as Reorganization Trustee herein claimed any interest in and to said property.

11. That at the time Petitioner took possession the said premises were in a bad state of repair and condition and could not be rented to advantage; that because of said condition a tenant could not be obtained for approximately one year; that Petitioner by expending a substantial sum of money, rehabilitated said premises and was then able to rent said property to a responsible tenant, namely, the Argonnaut Division of General Motors Corporation, at a satisfactory rental. During the period in which said premises were not rented, Petitioner maintained the same by [fol. 7] paying operating expenses including taxes, insurance, charges for water power, watchmen, and expended other sums to prevent deterioration of the property; that Petitioner expended $6,500.00 in maintaining and preserving the premises while he was in possession thereof.

12. That on December 27, 1943, Christopher Engineering Company in the instant proceedings filed its Petition in the United States District Court, for the Eastern District of Missouri, for reorganization under Chapter X of the Bankruptcy Law of the United States, and Jerome F. Duggan was appointed Reorganization Trustee in said proceedings.

13. That pursuant to orders entered in the National Aircraft Corporation proceedings then pending in the United States District Court, for the Southern District of Indiana, said Jerome F. Duggan, as Reorganization Trustee of Christopher Engineering Company, debtor herein, had notice of the filing of the involuntary Petition in Bankruptcy in the said United States District Court, for the Southern District of Indiana, against National Aircraft Corporation and on January 25, 1944, appeared by counsel on the hearing of the petitioning creditor in said cause for the appointment of a Receiver of National Aircraft Corporation. No Petition for Review was filed by said Reorganization Trustee to the Order entered on February 1,

1944, appointing James C. Sansberry Receiver in Bankrupty of National Aircraft Corporation, nor did said Jerome F. Duggan, Reorganization Trustee of Christopher Engineering Company, file an Answer to the Petition to have National Aircraft Corporation adjudicated a bankrupt.

14. That counsel for said Jerome F. Duggan were duly notified of the appointment of James C. Sansberry as Receiver in Bankruptcy of National Aircraft Corporation. [fol. 8] No Petition for Review was filed by said Reorganization Trustee to the Order appointing said Receiver. That said Jerome F. Duggan was represented by counsel at the first meeting of creditors of National Aircraft Corporation held on March 7, 1944, at which time James C. Sansberry was appointed Trustee in Bankruptcy of National Aircraft Corporation. He filed no Petition for Review to the Order entered appointing said Trustee

15. That pursuant to order of Court in the National Aircraft Corporation proceedings, said Jerome F. Duggan and his attorneys were given due notice of the calling of the meeting of creditors of National Aircraft Corporation for April 4, 1944, to consider the Trustee's Petition for Sale. Neither Jerome F. Duggan nor his counsel appeared at said meeting nor did they at any time file any objections to the entry of an order directing the said sale. That on April 10, 1944, said Jerome F. Duggan, Trustee of Christopher Engineering Company, was notified of the entry of the Order of Sale on April 6, 1944, in the Indiana proceedings. He filed no Petition for Review of said Order.

16. That on April 19, 1944, a Petition for Reorganization was filed in this cause by said National Aircraft Corporation. In said Petition National Aircraft Corporation for the first time alleged that it was a subsidiary of Christopher Engineering Company, debtor in this proceeding. On the said date, Jerome F. Duggan, the Reorganization Trustee of Christopher Engineering Company, was appointed by this Court Trustee of National Aircraft Corporation, and this Court found that National Aircraft Cor-

poration was a wholly owned subsidiary of Christopher Engineering Company, appointed Jerome F. Duggan Trustee, enjoined all further proceedings in the Court of Bankrutpcy in Indiana, and ordered the said James C. [fol. 9] Sansberry, the Indiana Trustee, to deliver the assets of the Bankrupt to the said Jerome F. Duggan, Reorganization Trustee.

17. On the evening of April 19, 1944, the evening immediately preceding the sale of the assets of National Aircraft Corporation, J. M. Brown, Secretary and Treasurer of National Aircraft Corporation, notified James C. Sansberry, Trustee in the Indiana proceedings, that he had obtained an injunction against the holding of the sale from the Judge of the United States District Court, for the Eastern Division of the Eastern Judicial District of Missouri, in which Court the reorganization proceedings of Christopher Engneering Company were then pending. No announcement of the entry of said injunction order was made at the said public sale and your Petitioner had no notice of the entry thereof. That neither Petitioner nor said Charles Green had any knowledge of the entry of said injunction order in these proceedings until many months after the consummation of the purchase of the aforedescribed property.

18. On May 10, 1944, said Jerome F. Duggan filed his Petition in the Indiana proceedings to vacate and set aside the Referee's Order entered on May 3, 1944, approving and confirming the sales, including the sale of the above described real estate to your Petitioner, and also prayed for an order staying the enforcement of the said order of May 3, 1944. Neither Petitioner nor Charles Green was ever notified of the filing of said petition or of any intention by said Duggan to disaffirm or rescind the sale of said real estate. On May 16, 1944, said petitions were denied and pursuant to the petition filed by said Duggan, the said Referee entered an order granting said Duggan leave to file [fol. 10] a Petition for Review.

19. That Jerome F. Duggan, Reorganization Trustee, thereupon filed his petition before the Honorable Robert C. Baltzell, Judge of the United States District Court for

the Southern District of Indiana, Indianapolis Division, wherein he prayed that an order be entered staying any further proceedings in the said Indiana bankruptcy case of the National Aircraft Corporation, and further praying that the Court enter an order holding for naught all actions taken and orders entered in the Indiana proceedings after April 19, 1944. That His Honor, Judge Robert C. Baltzell, of said United States District Court, on June 5, 1944, entered an order denying the said petition filed by Jerome F. Duggan, Reorganization Trustee, and in effect confirming and approving the sales made by James C. Sansberry, the Trustee in the Indiana proceedings, on April 20, 1944. From said order of June 5, 1944, Jerome F. Duggan filed an appeal to the United States Circuit Court of Appeals for the Seventh Circuit.

20. That the said United States Circuit Court of Appeals for the Seventh Circuit, on April 21, 1945, rendered its opinion in said cause and affirmed the said decision of the said United States District Court. Whereupon, said Jerome F. Duggan filed a Petition for Writ of Certiorari in the Supreme Court of the United States. On March 6, 1946, United States Supreme Court reversed the judgment of the United States Circuit Court of Appeals in the said cause and held in effect that the injunction order of this Court entered herein on April 19, 1944, was not subject to collateral attack in the bankruptcy proceedings filed in the United States District Court in Indiana, and remanded the said cause to the District Court of the United States for the Southern District of Indiana, for further proceed-
[fol. 11] ings in conformity with the opinion of the United States Supreme Court entered in said cause. Shortly thereafter, for the first time Petitioner learned that said Duggan claimed said real estate.

21. That while your Petitioner was in possession of the real estate hereinabove described, he leased the same to Argonnaut Division of General Motors Corporation; that on or about the 6th day of March, 1946, Jerome F. Duggan, Reorganization Trustee, assumed possession, dispossessed your Petitioner and has since on or about the 6th day of March, 1946, remained in possession and control of the aforedescribed property; that there was due and owing

from said Argonnaut Division of General Motors Corporation the sum of $8,799.35 and said lessee refused to pay said sum either to your Petitioner as the owner of said property, or to Jerome F. Duggan as Reorganization Trustee herein; that thereafter your Petitioner entered into a stipulation with said Jerome F. Duggan, Reorganization Trustee herein, wherein it was agreed that said funds would be paid to the said Reorganization Trustee without prejudice to the rights of your Petitioner thereto; that a copy of said stipulation is hereto attached marked Exhibit "A", and expressly made a part hereof. That based upon said stipulation an order was entered by this Court on July 31, 1950; that a copy of said order is hereto attached marked Exhibit "B" and expressly made a part hereof; that simultaneously with the execution of said stipulation (Exhibit "A"), Mr. George O'Durham as attorney for said Jerome F. Duggan, Reorganization Trustee, executed and delivered to your Petitioner a letter which in substance recites that Petitioner's rights, if any, would not in any wise be [fol. 12] prejudiced by any delay in filing this petition. A copy of said letter is hereto attached, marked Exhibit "C" and expressly made a part hereof. Pursuant to said stipulation (Exhibit "B") Argonnaut Division of General Motors Corporation paid the sum of $8,799.35 to said Duggan as Reorganization Trustee herein.

22. That in July, 1946, pursuant to an order of this Court said James C. Sansberry as Trustee in Bankruptcy of National Aircraft Corporation in the Indiana proceedings delivered to said Jerome F. Duggan, Reorganization Trustee herein, the sum of, to wit, $52,418.36, representing the proceeds from the sale of the personal property and of the real estate hereinabove described, without prejudice to the claims of said Sansberry as Trustee in Bankruptcy of National Aircraft Corporation and without prejudice to the rights of all other persons in said fund.

23. That Petitioner purchased the above described property in good faith and without knowledge of the injunction order which had been entered in this cause on April 19, 1944, and had no knowledge of any of the proceedings taken by any of the parties until the decision of the United

States Supreme Court was rendered on the 6th day of March, 1946. That Petitioner in good faith purchased said real estate, paid the purchase price for said property, received a Trustee's Deed therefor, recorded the same, caused an examination of the title to be made, found no defects in said title, entered into possession of said property, and remained in possession until after the said decision of the United States Supreme Court was rendered; that Petitioner is the legal owner of said real estate.

24. Section 47c of the Bankruptcy Act of the United States reads as follows:

[fol. 13] "The trustee shall, within ten days after his qualification, record a certified copy of the order approving his bond in the office where conveyances of real estate are recorded in every county where the bankrupt owns real property or an interest therein, not exempt from execution, and pay the fee for such filing. He shall receive a compensation of 50 cents for each copy so filed which, together with the filing fee, shall be paid out of the estate of the bankrupt as part of the expenses of administration."

The said Jerome F. Duggan as Reorganization Trustee failed to comply with said Section 47c of the Bankruptcy Act of the United States in that he failed to record within ten days after his qualification as such trustee a certified copy of the order of the Court approving his bond in the office of the Recorder of Madison County, Indiana, the county in which the real estate hereinabove described and owned by National Aircraft Corporation, Bankrupt, is located.

Section 21g of the Bankruptcy Act of the United States reads as follows:

"A certified copy of the petition with the Schedules omitted, of the decree of adjudication or of the order approving the trustee's bond may be recorded at any time in the office where conveyances of real property are recorded, in every county where the bankrupt owns or has an interest in real property. Such certified copy

may be recorded by the bankrupt, trustee, receiver, custodian, referee, or any creditor, and the cost of such recording shall be paid out of the estate of the bankrupt as part of the expenses of administration. Unless a certified copy of the petition, decree, or order has been recorded in such office, in any county wherein the bankrupt owns or has an interest in real property in any State whose laws authorize such recording, the commencement of a proceeding under this Act shall not be constructive notice to or affect the title of any subsequent bona-fide purchaser or lienor of real property in such county for a present fair equivalent value and without actual notice of the pendency of such proceeding; Provided, however, that where such purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. The exercise by any court of the United States or of any State of jurisdiction to authorize or effect a judicial sale of real property of the bankrupt within any county in [fol.14] any State whose laws authorize the recording aforesaid shall not be impaired by the pendency of such proceeding unless such copy be recorded in such county, as aforesaid, prior to the consummation of such judicial sale; Provided, however, that this subdivision shall not apply to the county in which is kept the record of the original proceedings under this Act."

By reason of the above described sections of the Bankruptcy Act of the United States, Petitioner acting in good faith and having paid the full purchase price for said real estate is the legal owner of said property.

25. On May 11, 1954, the United States Court of Appeals for the Eighth Circuit in the case entitled Phil Magidson v. Jerome F. Duggan, Trustee, et al, 212 Fed. 2d 748; cert. den. November 15, 1954, rehearing denied January 10, 1955, held that the aforesaid order of this Court dated April 19, 1944, holding that National Aircraft Corporation was a wholly owned subsidiary of Christopher Engineering Company was clearly erroneous and that there was no evidentiary basis for the findings of this

Court that National Aircraft Corporation was ever a subsidiary of Christopher Engineering Company. By reason of the aforesaid decision of the United States Court of Appeals, not only was the order of this court appointing Jerome F. Duggan trustee of National Aircraft Corporation invalidated, but so, too, were the orders entered subsequent thereto authorizing said Trustee to take possession of the assets of National Aircraft Corporation held by the Trustee appointed in the aforesaid Indiana bankruptcy.

26. Your Petitioner alleges that the invalidation of the aforesaid orders of this Court resulting from the aforesaid decision of the United States Court of Appeals requires that this Court now decree that the Petitioner is the legal owner of the real estate above described and that it entered an order directing the Trustee herein to relin- [fol. 15] quish by quit claim deed or otherwise all and whatever right, title and interest he may have as Trustee in and to the said real estate, and to deliver possession thereof to the Petitioner.

27. By reason of the aforesaid facts, your Petitioner alleges that the moneys which the Petitioner turned over to the Trustee herein pursuant to the aforementioned stipulation attached thereto as Exhibit "A" and expressly made a part hereof rightfully belonged to the Petitioner and that this Court should now order the Trustee herein to return all such moneys to your Petitioner.

28. Your Petitioner further states that since relinquishing the above described real estate to the Trustee herein in March, 1946, said Trustee rented said property for a short period of time, but has since neglected and failed to lease or rent said premises, and the buildings located thereon have for some time been unoccupied except for some machinery stored therein; that the said buildings have deteriorated considerably; that vandals have broken windows and seriously damaged the property; that unless steps are immediately taken to preserve the said property, further damage will result thereto to the detriment of Petitioner and the beneficiaries of Petitioner's trust; that the dilapidated and unkept condition;

of said buildings and real estate is set forth in detail in the affidavit of Wayne O. Wimmer of Elwood, Indiana, dated September 21, 1954, attached hereto and marked as Exhibit "D" and expressly made a part hereof; and said condition is further shown by the photographs of said buildings and real estate taken on September 10, 1954, by George A. Kelly of Elwood, Indiana, said photographs being numbered 1 through 10 inclusive and attached here- [fol. 16] to as Exhibit "E" and expressly made a part hereof. Your Petitioner states that by reason of the neglect of said real estate by the Trustee as herein described, your Petitioner has suffered substantial damage and will continue to do so unless this Court permits the Petitioner immediately to reacquire the possession and management of said property.

29. Your Petitioner further states that the Trustee herein has failed and neglected to pay real estate taxes assessed upon said property for the year 1953 and prior years and that the total delinquent tax due with interest and penalties to date, exclusive of taxes for the year 1954 due in 1955, is the sum of $5,769.30; that because said taxes are delinquent, said buildings and property were purchased by the appropriate officials of Madison County, Indiana, on December 1, 1954, for the amount of $5,769.30; that the period within which said property may be redeemed from said county expires on December 1, 1955, and that from December 1, 1954, to May 31, 1955, said property may be redeemed for $5,769.30 plus five (5) per cent interest and after June 1, 1955, to December 1, 1955, there is added an additional one (1) per cent for each sixty (60) days; that the first installment payment for real estate taxes for the year 1954 in the amount of approximately $721.35 will be due and payable on May 2, 1955, and the second installment in the approximate amount of $721.35 for said taxes for the year 1955 will be due and payable on November 7, 1955, and if said installments are not paid on the due dates therefor, an additional eight (8) per cent is added to the tax due. Your Petitioner states by reason of the aforesaid facts, the said real estate is in imminent danger of being forever lost to your Petitioner as the rightful owner thereof, and that it

[fol. 17] is for that reason also urgently necessary that this Court permit the Petitioner to reacquire possession and control of the property.

30. Your petitioner states that National Aircraft Corporation was not on April 19, 1944, nor at any time, a wholly owned subsidiary of Christopher Engineering Company and that this Court's finding that it was was clearly erroneous and based upon an ex parte proceeding and without evidence or notice to interested parties.

31. Petitioner files this petition at the direction and in behalf of all the beneficiaries of his trust, namely, J. Lee Hackett Co., Charles J. Green, and Earle Hart Woodworking Machine Co., and in pursuance of the authority vested in him by the trust agreement under which petitioner holds legal title to the real estate involved herein by deed from said James C. Sansberry as Trustee in Bankruptcy of National Aircraft Corporation.

Wherefore, your Petitioner prays that this Court enter an order:

(1) Finding that National Aircraft Corporation was not on April 19, 1944, nor at any time, a subsidiary of Christopher Engineering Company;

(2) Finding that this Court was without jurisdiction to enter its order of April 19, 1944;

(3) Directing that this Court's order of April 19, 1944, appointing Jerome F. Duggan, Trustee of National Aircraft Corporation, and enjoining all further proceedings in the Court of Bankruptcy in Indiana in the matter of National Aircraft Corporation, Cause No. 9401 in Bankruptcy, be vacated and held for naught.

[fol. 18] (4) Directing Jerome F. Duggan, Reorganization Trustee of Christopher Engineering Company, Debtor herein, and Trustee of National Aircraft Corporation, Subsidiary Debtor herein, to relinquish by quit claim deed or otherwise whatever right, title or interest he may have as Reorganization Trustee of Christopher Engineering Company, Debtor herein, and as Trustee of National Aircraft

Corporation, Subsidiary Debtor herein, in and to the said property, and to deliver possession of the premises to Petitioner.

(5) Directing said Jerome F. Duggan to pay over to your Petitioner all moneys hereto received by him from the Petitioner, and to render an accounting of any and all other moneys received by him as rental or otherwise from the aforesaid real estate.

(6) The payment by the Trustee herein of such damages as this Court may determine to have been sustained by the Petitioner by reason of his loss of the use and profits of said real estate, from March 6, 1946, to date, including any interest and penalties which your Petitioner may have to pay in order to free said real estate from the aforesaid tax liens thereon, and in addition thereto the payment of a reasonable compensation to the Petitioner for attorneys' fees.

(7) Granting your Petitioner such other and further relief as equity may require and to this Court shall seem just.

Benjamin S. Mesirow,
Trustee under Trust Agreement
known as Trust No. 140

Lashly, Lashly & Miller
Israel Treiman
Elihu M. Hyndman
705 Olive Street
St. Louis 1, Missouri
MAin 1-2939
Attorneys for Petitioner

[fol. 19] STATE OF FLORIDA)
) SS.
COUNTY OF SARASOTA)

Benjamin S. Mesirow, being first duly sworn, upon oath deposes and says that he is the Trustee under Trust Agreement known as Trust No. 140 in the above entitled cause;

that he has read the above Petition by him subscribed; that he knows the contents thereof, and that the same is true.

Benjamin S. Mesirow

Subscribed and sworn to before me this 24th day of February, 1955.

Mary L. Strong
Notary Public.

My commission expires: May 17, 1957

Filed in the United States District Court on April 7, 1955.

[fol. 20] EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

IN RE CHRISTOPHER ENGINEERING COMPANY, a corporation, Principal Debtor, NATIONAL AIRCRAFT CORPORATION, a corporation, Subsidiary Debtor.	No. 10947—Div. 1

(Stipulation.)

Comes now Jerome F. Duggan, Trustee, by George O. Durham, his authorized counsel, and Benjamin S. Mesirow, of 110 South Dearborn Street, Chicago, Illinois, Trustee under Trust Agreement No. 140, and show to the Court that General Motors Corporation (Allison Division) of Detroit, Michigan, is in possession of a fund in the sum of $8779.35, representing an unpaid balance due by it for the use and occupancy of a certain two story brick building, containing approximately 5,000 square feet of space, together with the surrounding vacant land, known as 450 North 9th Street, in the city of Elwood, Indiana.

That the said fund is claimed by the undersigned Benjamin S. Mesirow, Trustee, by virtue of a lease executed

by him to the said General Motors Corporation (Allison Division) under date of March 19, 1945, the said Benjamin S. Mesirow claiming title to said premises ultimately derived through James C. Sansberry, purporting to act as Trustee in Bankruptcy for the National Aircraft Corporation under appointment of the District Court in Bankruptcy for the United States for the Southern Division of Indiana, and the undersigned Jerome F. Duggan, Trustee, claims [fol. 21] title thereto by virtue of his authority as trustee in reorganization of the said National Aircraft Corporation under the orders of this Court.

And the undersigned show to the Court, on information and belief, that the said General Motors Corporation (Allison Division) assert no right or claim to said fund and since the same accrued have been holding it, with the consent of the parties hereto, subject to a proper order of this Court authorizing it to make disposition thereof free from all further claims and demands of either of the parties hereto.

And the parties hereto propose, at a convenient time, to seek the judgment of this Court as to their respective rights in and to said fund and in order that such judgment may be promptly carried into effect, then entered, hereby stipulate that an order of this Court be entered directing the said General Motors Corporation (Allison Division) forthwith to pay over to the undersigned trustee the said fund or, in the alternative, that it appear in this Court at a time to be fixed by the Court, and show cause why it ought not be required so to do.

And the parties hereto further stipuate that upon such payment the said General Motors Corporation (Allison Division) stand discharged and acquitted from all and any claim which the undersigned, or either of them, might otherwise have against it growing out of its occupancy of said premises.

And the parties hereto further stipulate that the said fund, upon payment to Jerome F. Duggan, Trustee, shall stand charged with a special lien in favor of the said Benjamin S. Mesirow, Trustee, in substitution of what, if any claim he might otherwise have asserted against said General Motors Corporation (Allison Division) and that

[fol. 22] pending the further order of the Court, the said Jerome F. Duggan, do not pay out or disburse any portion of said fund.

Benjamin S. Mesirow,
Trustee.

Jerome F. Duggan,
Trustee in Reorganization
by Geo. O. Durham,
Authorized Attorney

Geo. O. Durham,
Attorney for Jerome F. Duggan,
Trustee.

Simon H. Alster
Suite 1209, 100 West Monroe Street
Chicago, Illinois
Attorney for Benjamin S. Mesirow,
Trustee.

[fol. 23]. EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

IN RE CHRISTOPHER ENGINEERING COMPANY, a corporation, Principal Debtor, NATIONAL AIRCRAFT CORPORATION, a corporation, Subsidiary Debtor.	No. 10947— Div. No. 1 July 31, 1950.

(Order of Court.)

On stipulation of Jerome F. Duggan, Trustee of National Aircraft Corporation, Subsidiary Debtor, by George O. Durham, his authorized attorney, and Benjamin S. Mesirow, of 110 South Dearborn Street, Chicago, Illinois, Trustee under Trust Agreement No. 140, and Simon H. Alster,

his attorney, reciting that the General Motors Corporation (Allison Division) of Detroit, Michigan is in possession of a fund amounting to the sum of $8,779.35, representing an unpaid balance due by it for the use and occupancy of certain premises known as 450 North Ninth Street in the city of Elwood Indiana, and that the parties to said stipulation are asserting conflicting claims to the said fund and propose hereafter to submit their respective claims for determination by the Court in this proceeding and, to facilitate and render effective such determination, stipulate that said fund be collected and preserved by Jerome F. Duggan, Trustee for the debtor, without prejudice to the rights of either party to said stipulation, and that said fund in possession of the Trustee stand charged in substitution of what, if any, lien or claim either party thereto might otherwise have against said General Motors Corporation (Allison Division) growing out of its occupancy of said premises. Wherefore, it is:

[fol. 24] Ordered that the General Motors Corporation (Allison Division) of Detroit, Michigan, do forthwith pay over to Jerome F. Duggan, Trustee for the National Aircraft Corporation, subsidiary debtor, the sum of $8,779.35, representing the unpaid balance due by it for the use and occupancy of certain premises known as 450 North Ninth Street in the city of Elwood, Indiana, or, in the alternative, that the said General Motors Corporation (Allison Division) of Detroit, Michigan, within ten days after notice of this order, appear in this Court and in writing show cause why it ought not be required so to do.

And It Is Further Ordered that on payment of said sum to Jerome F. Duggan, Trustee for the Subsidiary Debtor, and the execution by him of a receipt therefor, that the said General Motors Corporation (Allison Division), its representatives and assigns, and all persons using or occupying said premises under it, or its representatives or assigns, stand forever discharged and released from all claims and demands which the said Benjamin S. Mesirow, Trustee, his representatives or assigns, or the estate of National Aircraft Corporation, Subsidiary Debtor, or its Trustee, might otherwise have or assert against it or them growing out of the lease or occupancy of said premises.

And It Is Further Ordered that the said monies, upon payment to the said Jerome F. Duggan, Trustee, stand charged in his hands with a special and prior lien in favor of Benjamin S. Mesirow, Trustee, in substitution of what, if any, claim he might otherwise have been authorized to assert against the said General Motors Corporation (Allison Division) for unpaid rent reserved by him in a lease heretofore executed by him to the said lessee dated March 19, 1945.

And It Is Further Ordered that the said Benjamin S. Mesirow, Trustee, be authorized, at his convenience, or upon twenty (20) days written notice so to do by the [fol. 25] Trustee of the Subsidiary Debtor, to appear and assert what, if any, claim he may have against said fund, pending which the further order of this Court the said Trustee for the subsidiary Debtor shall well and safely preserve said fund and make no disbursement thereof without special order of this Court.

It Is Further Ordered that a copy of this order, together with a copy of said stipulation, be served upon the said General Motors Corporation (Allison Division) of Detroit, Michigan, by United States Mail.

(Signed) Geo. H. Moore
Judge

A Copy Attest.

James J. O'Connor,
Clerk

By (Signed) Harold G. Pryce
Deputy Clerk

[fol. 26] EXHIBIT "C"

George O. Durham
315 N. Seventh St.
St. Louis 1, Mo.

March 31, 1950

Mr. Simon H. Alster
Suite 1209
100 West Monroe St.
Chicago 3, Illinois

In re: Mesirow, Trustee, and Associates
vs. National Aircraft Corporation

Dear Mr. Alster:

Pursuant to my telephone conversation with you today and in order to relieve you from any inference of laches in connection with any claim your client may have against Mr. Duggan, the National Trustee growing out of your ostensible purchase from the Indiana Trustee of the factory building at Elwood, and your payment to the Indiana Trustee of the purchase money, I am writing this letter as attorney for Duggan, Trustee.

You or your client have continually asserted rights as against Duggan, Trustee, in the property and particularly in the question of a refund in whole or in part of the purchase money paid by you and with reference to the unpaid rental accumulated in the hands of Allison Division, one of General Motors' Subsidiaries, which is, with my consent, holding the unpaid rents pending a determination of the proper payee.

Your Mr. Mesirow called on me shortly after Mr. Duggan took over the assets from the Indiana Trustee and in our conference we agreed to let the matter ride without prejudice pending further negotiations. Some two or more years ago you visited me at my office and on a number of occasions since we have discussed the question over the telephone and we mutually concluded that it would be more convenient to let the matter of the adjustment of your claim be deferred pending extended negotiations which I was carrying on with the War Department, with the un-

derstanding, however, that you might at any time elect to file and bring to a hearing a proper claim for the adjustment of your equity, and it was also agreed, in the event I desired to bring the matter to a head, that I would notify you of my determination and allow, without prejudice to you, a reasonable length of time to you thereafter to prepare [fol. 27] and present your claim. On the telephone today we again discussed the question and we concluded to continue our former agreement and understanding in effect. You expressed some apprehension that you might be charged with laches or suffer a procedural prejudice by your delay, hence this letter, which I think clearly recites that such delays as have occurred, and such future delay pending positive action on the part of either of us, under the conditions above stated has and will result under an arrangement for our mutual convenience and that such delay or delays shall not prejudice your right to present a proper claim and to secure a determination thereof on the merits, regardless of such delay, and this letter shall constitute the evidence of our understanding in that respect.

You may recall that at one time we discussed the possibility of the return of the administration to our mutual friends in Indiana. The United States Court of Appeals seems to have disposed of that probability in a case prosecuted by our mutual friend Mr. Gleick—Oglesby Supply Co. v. Duggan, 174 Fed. (2) 904.

My invitation to come in and see me whenever you are in St. Louis still stands.

Sincerely yours,

(Signed) Geo. O. Durham

GOD-O

P. S. I enclose extra signed copy for your client's files.

[fol. 28] EXHIBIT "D"

STATE OF INDIANA)
) SS:
COUNTY OF MADISON)

(Affidavit.)

Wayne O. Wimmer, being a resident of the City of Elwood, Madison County, Indiana, being first duly sworn upon his oath, deposes and says:

That he has resided in the City of Elwood for fourteen (14) years last past and has been engaged in the practice of law in that City and during said time has been familiar with the real estate formerly owned by the National Air Craft Corporation.

That on September 14, 1954, I went to the premises formerly owned by the National Air Craft Corporation for the purpose of inspecting the real estate and found that the brick building was unoccupied and unattended. The front door although equipped with a yale lock was unlocked and I gained access by merely turning the knob on the front door.

There were several windows broken from the building, and in addition to the front door, the sliding door over the dock at the East end of the building near the North end was open and will allow anyone free access to the building.

The weeds, briars, and bushes have been allowed to grow unobstructed around said building and the bushes are in excess of six feet in height and it is nearly impossible to walk through these weeds, briars, and bushes.

All the gates in and around the premises were unlocked and were standing open.

The loading platform on the East side of the building near the North end is in such a rotten and dilapidated condition that it is unsafe to walk on.

The mortar in the bricks on the East side of the building near the North end has loosened and has allowed bricks to fall from said wall to the ground.

The cupola over the North end of the building is in bad repair, some of the siding is off of the cupola, and the roof

has several holes in it allowing the weather and elements [fol. 29] to enter said building.

I did not inspect the entire building but only looked into said building from the windows and open doorways and it seems to be unoccupied, except for debris and trash scattered around in said building.

On the front or South end of said building and on the East side of the building facing North 9th Street in the City of Elwood, Indiana, are signs to this effect: "This Property under Jurisdiction of the U. S. District Court, For All Building Inquiry, J. M. Brown, 705 Olive Street, St. Louis, Missouri".

I checked the records of Madison County, Indiana, and find that the real estate above mentioned containing 3½ acres is in the name of Benjamin Mesirow, Trustee, and that there is now delinquent real estate taxes for the year 1952 and prior years together with penalty and interest to date in the sum of $4,327.00. That the taxes for the year 1953 due in the year 1954 are a lien and unpaid and the first installment is now delinquent and the second installment will become delinquent if not paid by November 1, 1954, and that there is now due on the 1953 taxes the sum of $1,500.41 making a total tax due to date of $5,827.41.

Affiant further says that he makes this affidavit for the purpose of showing the above facts and for the purpose of showing the dilapidated and unkept condition of the real estate formerly owned and operated by the National Air Craft in the City of Elwood, Indiana.

Further affiant sayeth not.

(Signed) Wayne O. Wimmer
Affiant

Subscribed and sworn to before me this 21st day of September, 1954.

(Signed) Madaline Seal
Notary Public

Seal

My commission expires: 5-20-56

[fol. 30] EXHIBIT "E"

EXHIBIT E.

Exhibit "E" (1)

Exhibit "E" (2)

[fol. 30]

EXHIBIT "E"

EXHIBIT E.

Exhibit "E" (3)

Exhibit "E" (4)

[fol. 30] EXHIBIT "E"

EXHIBIT E.

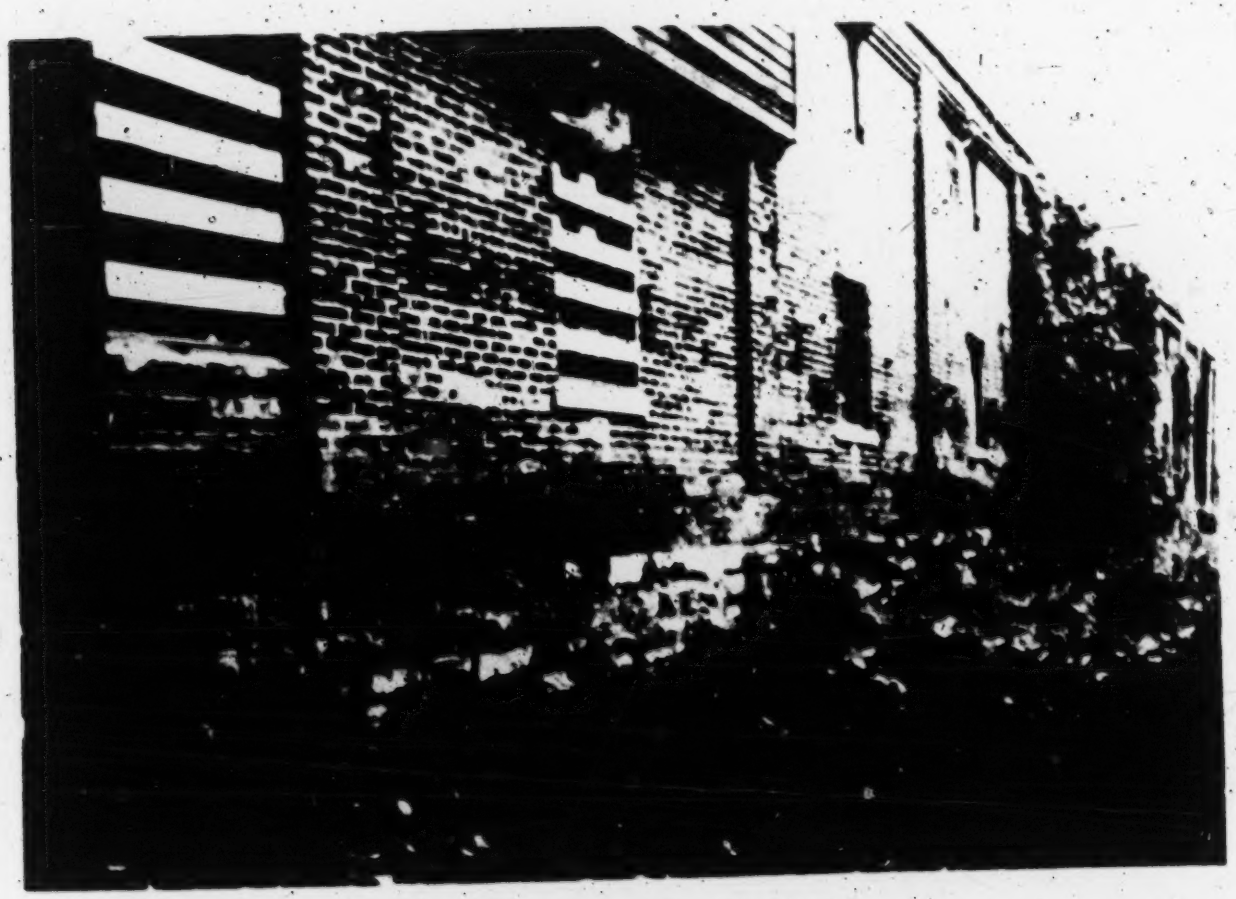


Exhibit "E" (5)

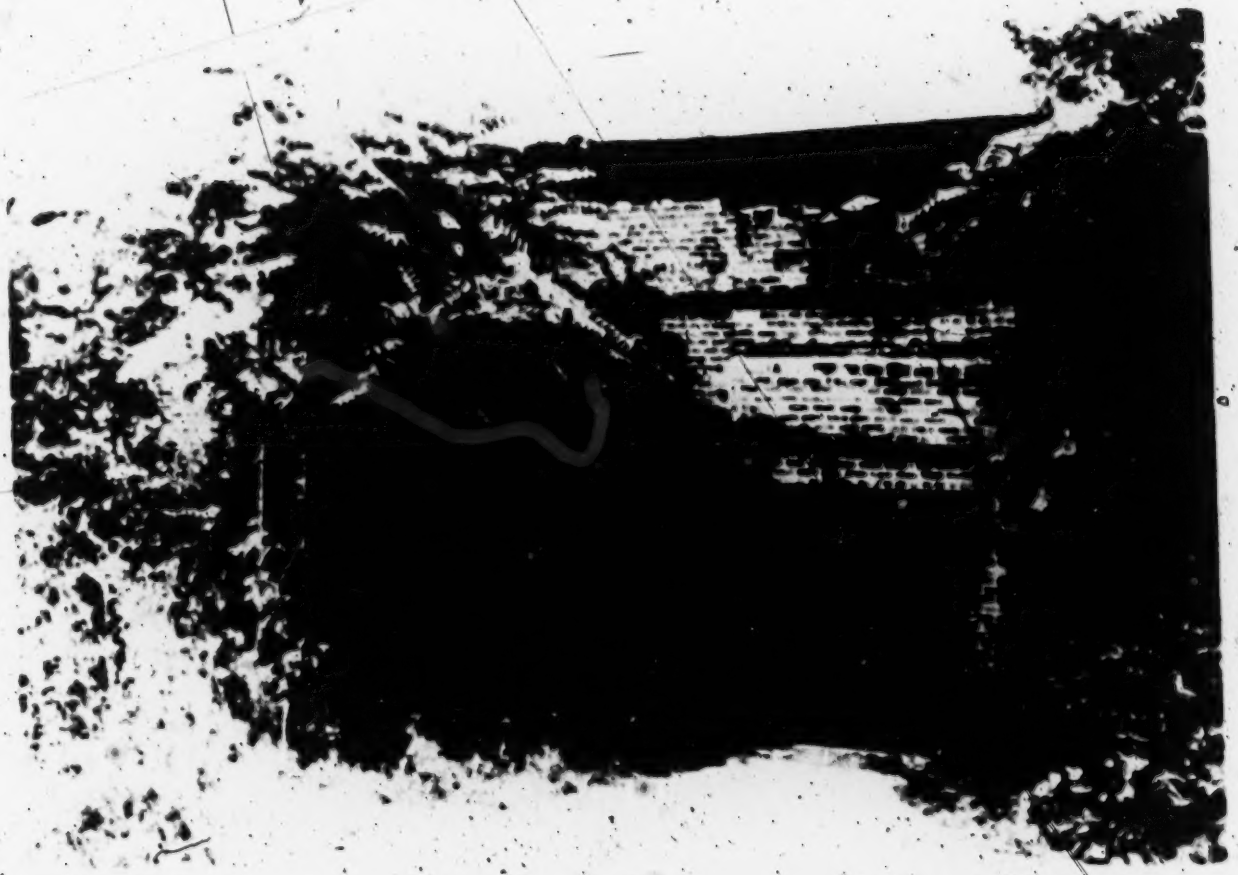
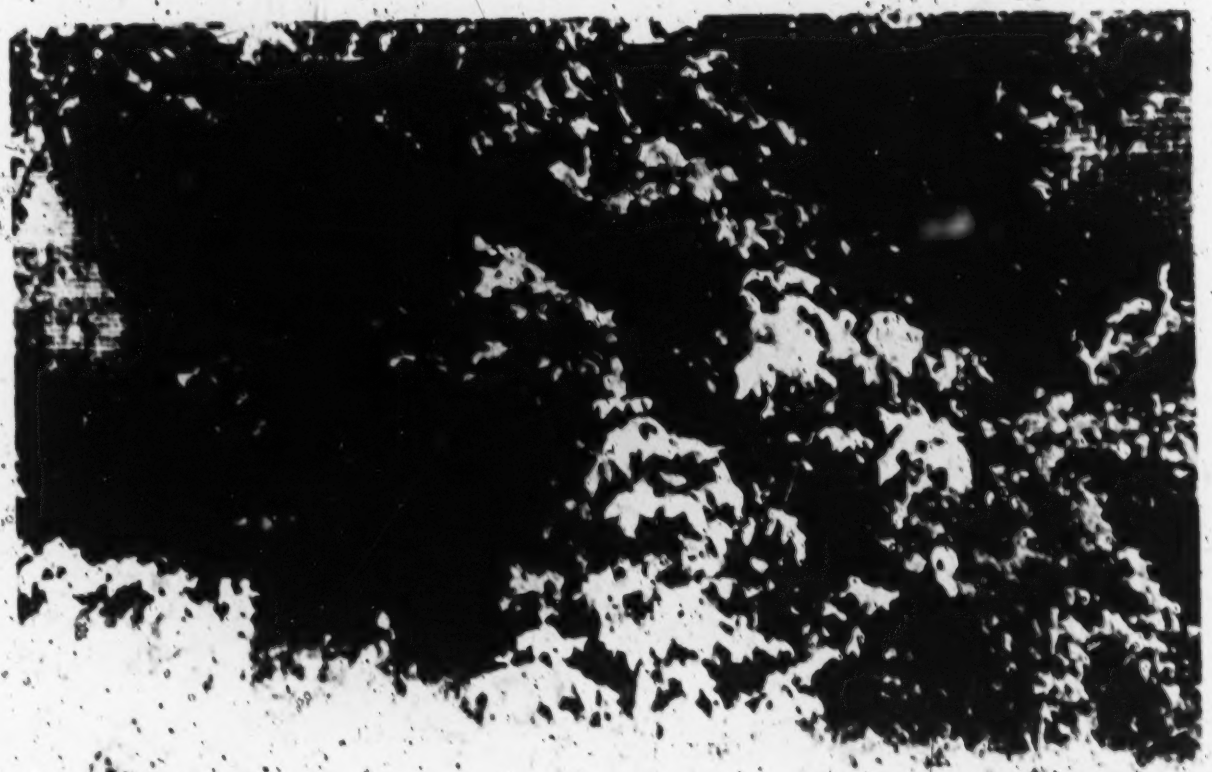


Exhibit "E" (6)

[fol. 30]

EXHIBIT "E"

EXHIBIT E



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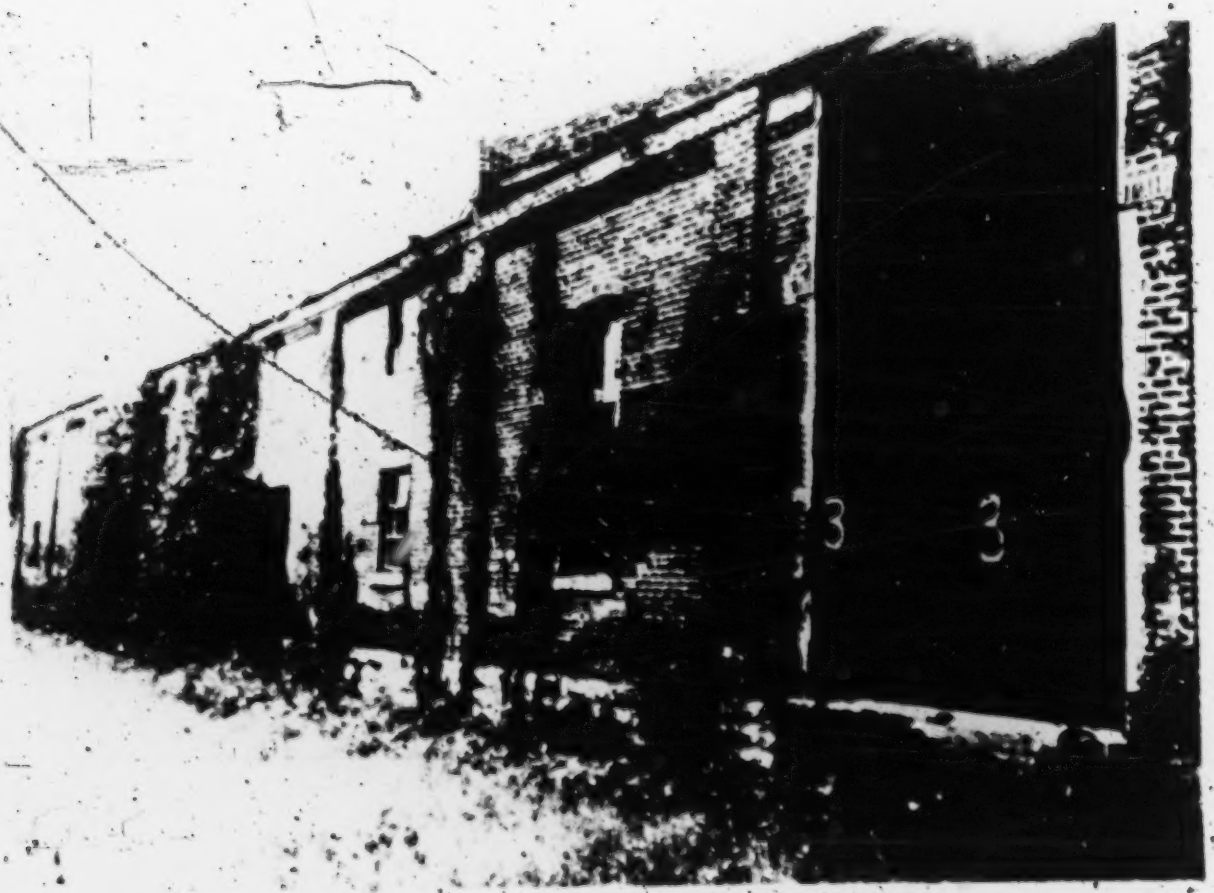

Exhibit "E" (8)

[fol. 30] EXHIBIT "E"

EXHIBIT E

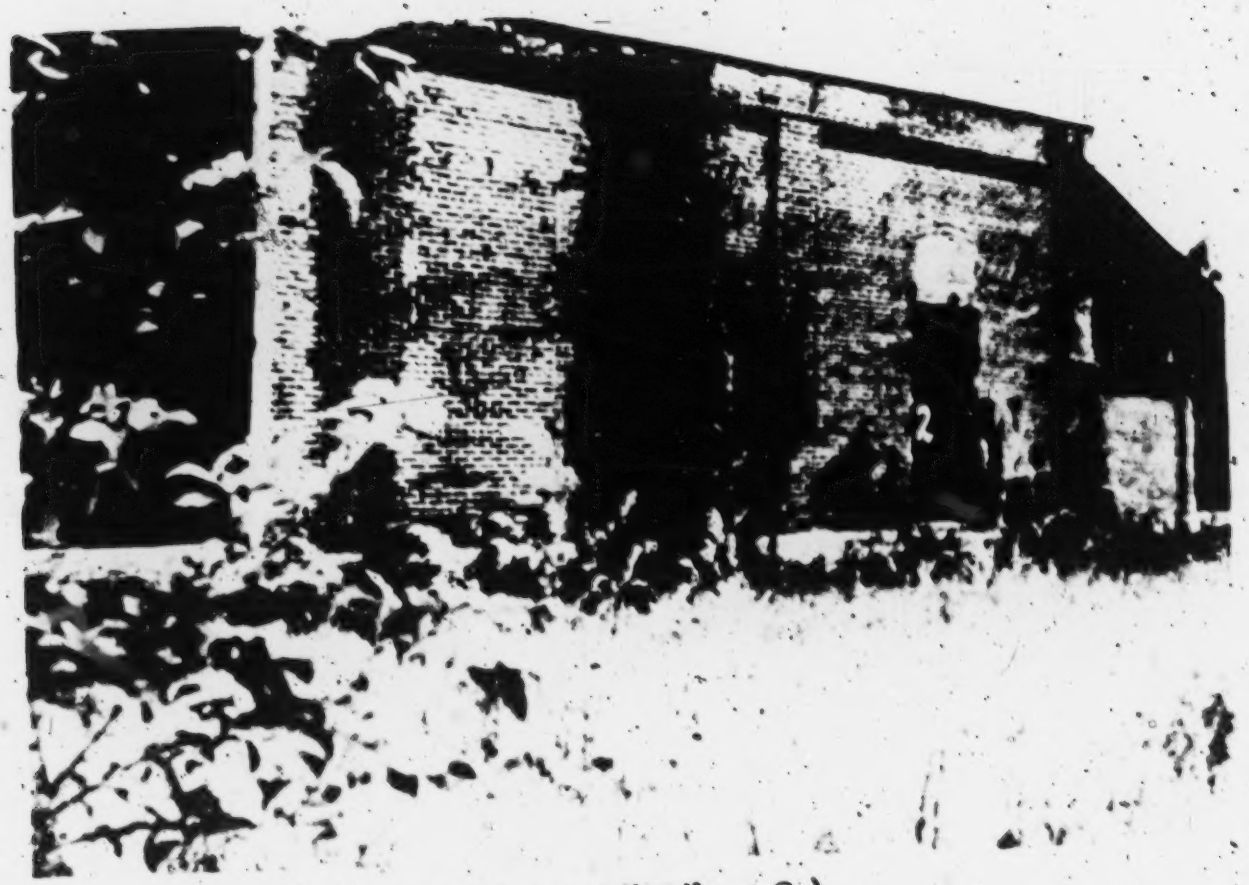

Exhibit "E" (9)

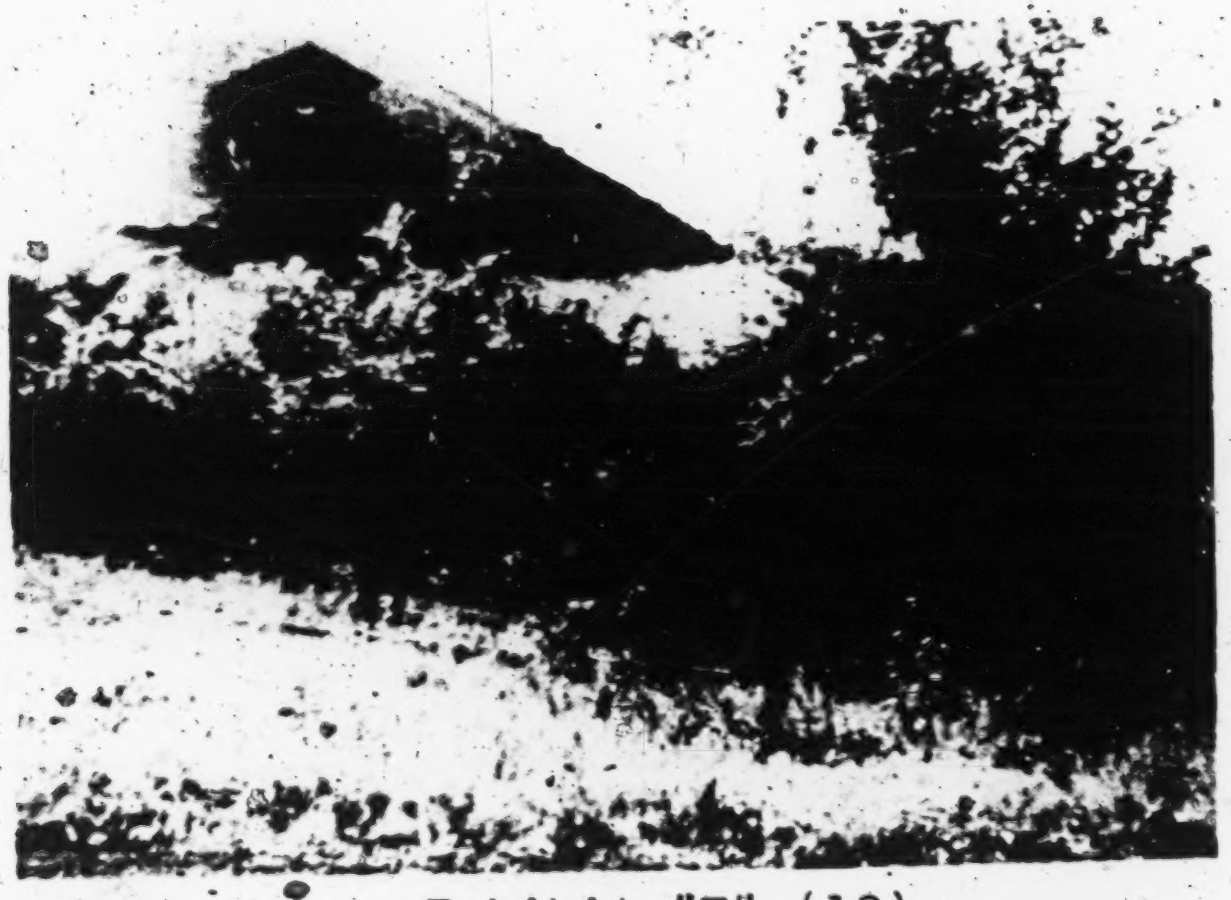

Exhibit "E" (10)

(p 36 in Plaintiff's)

[fol. 31] IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

IN RE CHRISTOPHER ENGINEERING COMPANY, Debtor, NATIONAL AIRCRAFT CORPORATION, Subsidiary Debtor.	In Reorganization No. 10947 Division No. 1

(Answer and Exceptions to the Petition and Demand for Relief of Benjamin S. Mesirow, etc., and Counterclaim.)

Comes now National Aircraft Corporation, subsidiary debtor, by Jerome F. Duggan, its Trustee in reorganization, hereinafter called defendant, and excepts to and answers the petition of Benjamin S. Mesirow, etc., hereinafter called petitioner, and shows to the Court that the said petition fails to state facts on which relief may be granted the petitioner.

Further answering, defendant shows to the Court that the petitioner is not entitled to any relief, legal or equitable, against the defendant, for the reason that the petitioner's relationship to and possession of the property in question was in law that of a volunteer and trespasser, and in contempt of the Orders of this Court, and by reason of his unwarranted interference with the possession of this defendant and its lawful Trustee in reorganization, the petitioner is indebted to the defendant in large sums of money, all of which is more particularly set forth in this defendant's counterclaim herewith filed.

Further and specifically answering the allegations of the petitioner, the defendant:

1.) Admits the allegations of Paragraph 1 of said petition.

[fol. 32] 2.) Admits the allegations of Paragraph 2 of said petition.

3.) Admits the allegations of Paragraph 3 of said petition.

4.) States that it is without knowledge of facts sufficient to form a belief as to the truth of the allegations of Paragraph 4 of said petition and therefore denies the same.

5.) Admits the allegations of Paragraph 5 of said petition.

6.) Defendant is without knowledge of facts sufficient to form a belief as to the truth of the allegations of Paragraph 6 of said petition, and therefore denies the same.

7.) Defendant is without knowledge of facts sufficient to form a belief as to the truth of the allegations of Paragraph 7 of said petition, and therefore denies the same.

8.) Defendant is without knowledge of facts sufficient to form a belief as to the truth of the allegations of Paragraph 8 of said petition, and therefore denies the same.

9.) Defendant is without knowledge of facts sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the petition, and therefore denies the same.

10.) Defendant is without information or knowledge of facts sufficient to form a belief as to the truth of the allegations of Paragraph 10 of said petition, and therefore denies the same.

11.) Answering Paragraph 11, this defendant admits that the petitioner took physical possession of the premises in question on or about June 15, 1944, under the purported authority of a deed dated June 15, 1944, and recorded June 29, 1944. Said deed was executed by one Sansberry, theretofore trustee in bankruptcy for the National Aircraft Corporation, under purported orders of a referee in ordinary bankruptcy for the District Court in Bankruptcy for [fol. 33] the Southern District of Indiana, but defendant states that the proceedings for the purchase and sale of said premises and the purported conveyance to the peti-

tioners were void and without legal or equitable effect, and were made and consummated after the jurisdiction of this Court over defendant and over said property had attached and after the jurisdiction of said Court of Bankruptcy in Indiana had been superseded and terminated by order of this Court in a reorganization proceeding, and all proceedings and acts relied on by petitioner were had and done in contempt of the jurisdiction of this Court, and defendant states that by the proceedings, recited in the petition, the petitioner acquired no right in or to the premises in question or any enforcible, legal or equitable claim against the property in question or against this defendant, and that petitioner's relationship to the property and his custody thereof was in law and equity at all times that of an interloper or trespasser, and in contempt of the orders and judgment of this Court. Defendant denies that the petitioner expended a substantial or any sum of money in rehabilitating said property, paying taxes, insurance, etc., as alleged in Paragraph 11 or, in the alternative, states that the petitioner, being a volunteer and interloper or trespasser on said property, did not and could not have expended any money by way of maintenance, or otherwise, for the expenditure of which the petitioner can assert an enforcible claim against this defendant or against the premises in question.

12.) Admits the allegations of Paragraph 12 of said petition.

13.) Defendant states that it is without information or knowledge of facts sufficient to form a belief as to the truth of the facts alleged in Paragraph 13 of the petition, [fol. 34] and therefore denies the same. Defendant further states that the jurisdiction of this Court and the authority of this reorganization Trustee, did not attach until April 19, 1944 and that his knowledge of facts, or his action or inaction prior to that date, with reference to the said proceedings pending in Indiana are irrelevant to this proceeding or to the petition filed herein.

14.) This defendant states that it is without information or knowledge of facts sufficient to form a belief as to the

truth of the facts set forth in Paragraph 14 of the petition, and therefore denies the same and states that the purported facts set forth in said Paragraph are at any rate irrelevant and immaterial and do not constitute any ground for claim by the petitioner against this defendant or its estate.

15.) Defendant admits the allegations of Paragraph 15 of the petition, but states that the proceedings recited therein were had prior to the time the National Aircraft Corporation's petition for reorganization as a subsidiary of the Christopher Engineering Company was filed and before this reorganization Trustee bore any official relationship to the assets of the subsidiary debtor.

16.) Answering Paragraph 16 of the petition, defendant admits the allegations thereof and admits that the National Aircraft Corporation, in its said petition for reorganization alleged that it was a subsidiary of Christopher Engineering Company within the meaning of the Bankruptcy Act, but states that prior to such time, so far as this Trustee knows, no occasion had arisen whereby the said National Aircraft Corporation could or would have formally alleged its relationship to the Christopher Engineering Company, but defendant states that counsel for this Trustee, in his [fol. 35] capacity of reorganization Trustee of Christopher Engineering Company, had on numerous occasions prior to April 19, 1944, conferred with the Indiana Trustee and his counsel and sought to persuade them to withhold action for the liquidation of the assets of the National Aircraft Corporation pending further action by this Court, and pointed out that the stock of the National Aircraft Corporation was held in such manner that the said National Aircraft Corporation was in legal effect under the Bankruptcy Act, a wholly owned subsidiary of Christopher Engineering Company, the principal debtor in this proceeding.

17.) Answering Paragraph 17 of the petition, defendant admits that on the evening of April 19, 1944, prior to the purported sale of the assets of the National Aircraft Corporation, that James C. Sansberry, Trustee, was notified by one J. M. Brown of the injunction aforesaid prohibiting the contemplated sale described in the petition, and further

states that notice of said order and injunction was duly served by the United States Marshal's Office for the Southern District of Indiana upon the said James C. Sansberry, upon his auctioneer and upon various other parties, prior to the purported sale in question. On information and belief defendant states that announcement of said order and injunction was made to the public at the alleged sale and that a conference was had between said Sansberry and his counsel and the Referee in Bankruptcy, at which conference the said decree and injunction was considered and discussed as a result of which conference the said parties erroneously concluded that this Court was without jurisdiction under the circumstances that the Subsidiary Debtor was involved in ordinary bankruptcy proceedings in Indiana and concluded to ignore said Order and injunction and proceeded with the said sale subject to the approval of the Referee in the Indiana proceedings whereupon the said [fol. 36] Trustee and his counsel on order of the said referee proceeded to St. Louis, and employed counsel and after examining the records of this Court, and without application to this Court for relief, advice or instructions proceeded to carry out the purported sale, on which petitioner bases his claim. All of these matters were matters of record, which petitioner knew or could have known, and so knowing, elected to take possession of said premises, without the consent of this Trustee and without application to or order of this Court. On information and belief this Trustee denies that the petitioner had no notice of such injunction, but at any rate states that the petitioner and his counsel had full knowledge that he was buying at a judicial or bankruptcy sale and that the jurisdiction and authority of the Trustee to sell was essential to the validity of his purchase. And defendant states that in any event petitioner knew or was charged with knowledge of the decree and injunction of this Court prior to consummating his alleged purchase of said premises, for the reason that prior to such purported consummation, legal notice had been given the public by the acts of this Trustee in causing to be recorded in the Recorder's Office of Madison County, Indiana, the decree, injunction and order appointing him and his qualification as Trustee in reorganization of the

assets of the Subsidiary Debtor, in accordance with Section 21 (g) of the Bankruptcy Act, recited in Paragraph 24 of the petition.

18.) Defendant admits the allegations of Paragraph 18 of the petition; and admits that petitioner was not formally served or notified of the filing of said petition, by the defendant but states that the petitioner, at the filing of said petition for reorganization, was neither a creditor nor [fol. 37] stockholder of said National Aircraft Corporation, and not a person entitled by law to notice thereof or to contest said proceeding. And defendant states that the order of this court approving said petition for reorganization and enjoining said sale and further proceedings in the said bankruptcy proceeding under which the petitioner bases his right was, on the 5th day of May, 1944, and before the purported sale under which petitioner claims was consummated was caused to be recorded, by the defendant in the Recorder of Deeds Office for Madison County, Indiana, the County and State wherein the premises in controversy is located.

19.) Admits the allegations of paragraph 19 of the petition.

20.) Admits the allegations of paragraph 20 of the petition, save only petitioner's interpretation of the judgments therein recited, which judgments are of record and are referred to herein and are for interpretation by this Court. And this Trustee denies that the petitioner first learned that this Trustee was claiming said real estate after the rendition of said judgments, and this defendant further states that petitioner learned or was charged by law with knowledge that this Trustee by virtue of his office claimed said real estate before said sale was cried and before the alleged consummation thereof on June 15, 1944.

21.) Answering paragraph 21 defendant denies that the petitioner was at any time lawfully in possession of the real estate described, but states that the petitioner unlawfully trespassed and entered upon the possession of said real estate on or about June 15, 1944, and unlawfully

and in contempt of the orders of this court entered upon and continued in possession thereof until on or about the ... day of March, 1946, when this Trustee, under authority of the opinion and decree of the Supreme Court of the [fol. 38] United States, peaceably entered upon the possession of said property and dispossessed the petitioner and his tenants. Denies that at the time this Trustee assumed possession of the premises the petitioner's tenant, Argonaut Division of the General Motors Corporation, was indebted for past due rent in any sum of money, and states that subsequent to this defendant assuming possession of said real estate, the said Argonaut Division was allowed by this Court and its officers to continue in possession of said premises until some time in December, 1946, on an agreement that it would withhold payment of rent accrued after the 6th day of March, 1946, pending further orders of this Court. Admits that thereafter the sum of $8,799.35 accrued for the use and occupation of said premises by the said Argonaut Division, at which time it was agreed and stipulated by the petitioner and this Trustee and the said Argonaut Division of the said General Motors Corporation, that said funds should be paid to his reorganization Trustee without prejudice to any rights which the petitioner might lawfully have thereto, and that pursuant to said stipulation the said Argonaut Division of the General Motors Corporation paid to this Trustee the sum of $8,799.35, and by order of this Court were discharged from further liability either to this Trustee or to the petitioner. It is also admitted that what, if any, rights the petitioner might have to said sum of money would not be prejudiced by delay in filing a petition with this Court to determine the ownership of said monies so paid by the said Argonaut Division.

Further answering Paragraph 21, this Trustee states that said sum so received from the Argonaut Division of the General Motors Corporation represented rent, damages or compensation for the use and occupation of the said premises after this Trustee in reorganization entered and [fol. 39] assumed possession on or about March ....., 1946. That the petitioner has no right or interest in such monies, and that the same constitutes assets of the subsidiary debtor, and are rightfully, the property of this defendant

and its reorganization Trustee. That the petitioner never had the lawful right to the possession or use of the said real estate, either before or after this Trustee, on March ....., 1946, peaceably entered and took possession of said real estate, and has no legal or equitable interest in the monies collected by this reorganization Trustee as compensation or damages for the use of said premises by the said Argonaut Division after that date.

22.) Answering Paragraph 22, this Trustee admits that in July, 1946, the said James C. Sansberry, theretofore Trustee in Bankruptcy of the National Aircraft Corporation in the Indiana proceedings, delivered to this Trustee, as reorganization trustee, the sum of $52,418.36, purporting to be the unexpended balance of all the monies collected by him as Trustee in Bankruptcy, without prejudice, however, to the rights of any parties growing out of the said Trustee's handling of the estate of the National Aircraft Corporation in the Indiana proceedings. And defendant Trustee states that he is without knowledge or information sufficient to form a belief as to whether all or any part of the alleged balance consisted of money voluntarily paid over to the said Sansberry by the petitioner in consummation of said contemplated or unauthorized sale, and, in any event, denies that the payment by petitioner to said Sansberry authorized any legal or equitable claim or lien by petitioner against the subsidiary debtor, or assets subsequently coming to the possession of this defendant, or its reorganization Trustee, and states that insofar as any proceedings were had in the Indiana Court after the rendition of the decree of this Court approving [fol. 40] the subsidiary petition of National Aircraft Corporation for reorganization in this Court, and after the recording of said decree in the office of the Recorder of Deeds for Madison County, Indiana, as aforesaid, were unlawful, in that after the said dates, the said Trustee and Court in Indiana, and the petitioner, were, in legal effect, mere volunteers and interlopers and trespassers with respect to the property and assets of the said National Aircraft Corporation, and not entitled to claim, of this or any other Court, relief from the effect of transactions had between said trespassers.

23.) Answering Paragraph 23, this Trustee denies that the petitioner purchased said property from any person authorized to sell the same in good faith and without knowledge of the injunction order described, until subsequent to the decision of the United States Supreme Court granted on the ..... day of March, 1946. Denies that the petitioner, in good faith, purchased said real estate of any person having the legal power to sell the same, or that he paid the alleged purchase price and received a deed under such circumstances as to give him any right or equity in or to said real estate, or to compensation for the use thereof, against defendant, on the theory that he was a purchaser in good faith and without notice of defect in the authority of the party from whom he allegedly purchased, and states that the said purchaser was legally charged with notice of this Trustee's legal ownership of said real estate by operation of law, by virtue of the fact that before his alleged purchase was consummated, this defendant caused the order of this Court to be recorded in accordance with Section 21(g) of the Bankruptcy Act aforesaid before said purported sale was consummated.

24.) Answering Paragraph 24, this Trustee admits Section 47(c) and Section 21(g) of the Bankruptcy Act, as [fol. 41] recited in the petition, and states that in accordance with said Act, he, on May 5, 1944, and before the petitioner undertook to consummate his alleged purchase and before he paid out any money on account thereof to any one, this Trustee caused to be recorded in the Recorder's Office for the County of Madison, Indiana, a certified copy of the decree or order appointing him reorganization Trustee, as aforesaid, and enjoining further proceedings with respect to said sale by the said Sansberry, Trustee, as a result of which the petitioner is charged by law with knowledge of the insufficiency of said Sansberry's title and barred from claiming that he, in purchasing said property and in purporting to have paid the full purchase price thereof, acted in good faith.

25-26.) Answering the allegations of Paragraphs 25 and 26 of the petition, this Trustee states that insofar as

the facts recited by the petitioner from the case of Magidson v. Duggan, et al., might be interpreted as controlling the adjudication of petitioner's demand in this case, or as invalidating the orders of this Court approving the petition of National Aircraft Company for reorganization and appointing Jerome F. Duggan as Reorganization Trustee, and as requiring the Court to confirm the proceedings had in the Bankruptcy Court in Indiana, subsequent to the approval of the National Aircraft Corporation's petition for reorganization in this Court, and to decree the petitioner to be the legal owner of the real estate above described, and to direct the Trustee herein to relinquish by quitclaim deed, or otherwise, his right, title and interest as Trustee in said real estate, and to deliver possession thereof to the petitioner, and to account to the petitioner for the income and profits therefrom, or to deliver to the petitioner income for the use and occupation of said premises, subsequent to the 6th day of March, 1946, by restoring to the petitioner rents recovered of the Argonaut Division of the [fol. 42] General Motors Corporation, that the said Eighth Circuit Court of Appeals was without jurisdiction to adjudicate in said proceeding any of the issues or demands asserted by the petitioner herein, for the reason that said Court's jurisdiction is by law limited to the jurisdiction of a reviewing Court, and such issues were not regularly before the said Court of Appeals for review and adjudication in the said case of Magidson v. Duggan, Trustee, etc., and that the petitioner was not a party to said case, nor were the validity of the Orders of this Court generally, in the reorganization proceedings, in issue or within the jurisdiction of said Court of Appeals in the case aforesaid, nor was the question or issue of petitioner's rights or interest in the property involved herein, arising from acts and transactions between the petitioner and the said Sansberry, Trustee in Bankruptcy in the Indiana proceeding, had after the approval of the National Aircraft Corporation's petition for reorganization, and the issuance by this Court of its injunction against said sale involved in the issues on said appeal, wherein the recited was entered. And this Trustee states that the acts and conduct of the petitioner, the Indiana Trustee and the Bankruptcy Court in Indiana had and done in violation of this Court's order

approving the subsidiary petition and enjoining the sale, were contemptuous and without authority in law, and that the petitioner, as well as said Trustee in Bankruptcy, and said Bankruptcy Court, were in relation to the facts relied on by the petitioner for relief in this action were in law equivalent to that of mere trespassers and afforded no grounds for relief, legal or equitable, to the petitioner in this proceeding, and that the opinion of the Eighth Circuit Court of Appeals relied on did not have the legal or equitable effect of absolving the petitioner of the petitioner's contempt and trespass and vesting him with an enforcible [fol. 43] legal or equitable demand against this Trustee in his official capacity as Trustee in Reorganization for the National Aircraft Corporation.

27.) Denies that petitioner has any rightful claim or ownership of the fund received by this Trustee from the Argonaut Division of the General Motors Corporation, for the reason that said fund represented the value of the use and occupation of said premises after this Trustee, by virtue of the opinion of the Supreme Court of the United States, entered and took possession of said premises on March ..... , 1946, and for the reason that the petitioner was not lawfully in possession of said property at any time, and had never rightfully been in possession of said property, and avers that petitioner's possession was unauthorized and contemptuous, and equivalent to that of a volunteer and trespasser.

28-29.) Answering Paragraphs 28 and 29 of the petition, this Trustee denies the facts therein set forth and states that such facts or alleged facts are, in any event, irrelevant to the issues herein submitted by the petitioner, do not concern the petitioner, and give him no right or claim for judgment on his said demand, and fail to state any facts authorizing, or tending to authorize, any relief to the petitioner.

30.) Answering Paragraph 30 of the petition, this Trustee states that the petitioner is neither a creditor nor stockholder of the National Aircraft Corporation, and was not such on April 19, 1944, nor one authorized by the

Bankruptcy Act to contest its corporate petition for reorganization under the Bankruptcy Act, nor one entitled to contest the validity and order adjudicating it a subsidiary of Christopher Engineering Company, and admitting it to reorganization in connection with that of the reorganization of the Christopher Engineering Company, or one entitled to challenge the sufficiency of the evidence [fol. 44] on which it was admitted to reorganization, or entitled to notice of the contemplated proceeding. That the petitioner's situation and dilemma was brought about solely because he voluntarily elected to disregard and violate the orders of this Court under such circumstances as to constitute him a contemptuous trespasser in his dealings with the property involved, and under such circumstances as to give him no right of action, legal or equitable, against the estate in the hands of the Reorganization Trustee, or a claim against its assets. That the jurisdiction of this Court to enter said Orders has, at any rate, been affirmed by the Supreme Court of the United States in proceedings wherein that question was directly involved—Duggan v. Sansberry, et al, 327 U. S. 499, 90 L. Ed. 809, and by the Eighth Circuit Court of Appeals, where that question was directly involved, in the case of Oglesby & Simpson Supply Co. v. Duggan, 174 Fed. (2d) 904. That the recitals of the 8th Circuit Court of Appeals in the case of Magidson v. Duggan, Trustee, were, insofar as they might be held to challenge the jurisdiction to this Court to enter the Order complained of on the evidence, beyond its jurisdiction in the proceeding where announced, and void and of no judicial effect upon the determination of the issues submitted by petitioner in this proceeding.

31.) And generally this Trustee states that, notwithstanding the extensive statement and petition filed by the petitioner herein, it appears therefrom and is factually true, that this Court, on April 19, 1944, having jurisdiction of the parties and subject matter, lawfully approved a petition of the National Aircraft Company for reorganization as a subsidiary of Christopher Engineering Company in a reorganization proceeding pending in this Court, and, simultaneously therewith, this Court enjoined further proceedings and sale of the National assets by the Bankruptcy Court in Indiana.

[fol. 45] That a copy of said Order and injunction was duly served upon the superseded Trustee before any sale was cried, and thereafter, on May 5, 1944, the said decree and Order was, in accordance with the Bankruptcy Act, duly recorded in the Recorder's Office for the County of Madison, Indiana, the County wherein said real estate was located. That thereafter, the petitioner and the officers of said Bankruptcy Court, in Indiana, colluded and undertook, on the 15th day of June, 1944, to consummate and effect a sale of the real estate involved herein to petitioner, in violation and contempt of the Order and decree of this Court, and pursuant to their collusive and unlawful purpose, the petitioner paid, or purported to pay, to his correlate in contempt, one James C. Sansberry, as Trustee under the Indiana proceeding in ordinary bankruptcy, a purchase price, for said property, and he, the said Sansberry, simultaneously therewith, executed to the petitioner a purported Trustee's Deed to said property which the petitioner accepted and forthwith entered in possession of said property.

That at the time of such alleged consummation, the said Trustee in Indiana was without legal authority to consummate said sale or to receive the alleged purchase price thereof on behalf of the estate of the subsidiary debtor, as petitioner was bound to know from the record of the Recorder of Deeds' Office in Madison County, Indiana, and the records of the Bankruptcy Court in Indiana, that said Sansberry was without authority to sell said property or to receive payment for same on behalf of the subsidiary debtor, and the payment, if any, to the said Sansberry, Indiana Trustee, was voluntary on the part of the petitioner, and without any legal consideration to the estate of the subsidiary debtor. That the said Sansberry, Indiana Trustee, is not an officer of this Court and is and was without authority to bind the subsidiary debtor, this Trustee, of the estates represented by him in any contract [fol. 46] or transaction with third parties, or with the petitioner, and without authority to vest the petitioner with any cause of action against this reorganization Trustee, or the estates, and was and may not claim judicial relief against the consequences of the said acts, and as a result of

his said misconduct, petitioner does not come into Court with clean hands and is without a right to any judicial relief in the circumstances.

Wherefore, defendant, by its Trustee in reorganization, prays that the petitioner take nothing by his petition, and that his petition be dismissed at his costs.

Jerome F. Duggan,
Trustee in Reorganization.

George C. Durham,
315 N. 7th Street,
St. Louis 1, Mo.

Attorney for Jerome F. Duggan, Trustee in Reorganization.

COUNTERCLAIM

1.) And for further answer to the petitioner's demand for relief, and for its counterclaim the defendant, by Trustee in reorganization, states that on April 19, 1944 the said National Aircraft Corporation had been adjudicated a bankrupt in the United States Court of Bankruptcy for the Southern District of Indiana, and that the said bankrupt owned certain real estate described in the petition of petitioner, located in the City of Elwood, in Madison County, Indiana, on which one Sansberry, who had theretofore been appointed Trustee in Bankruptcy for said National Aircraft Corporation, had instituted proceedings preliminary to a sale in bankruptcy.

2.) That on said 19th day of April, 1944, and before any sale of said real estate had been cried or consummated, this Court, in a proceeding for the reorganization of one Christopher Engineering Company, a corporation, on petition of said National Aircraft Corporation, approved its [fol. 47] petition for reorganization as a subsidiary of said Christopher Engineering Company, appointed Jerome F. Duggan Trustee in reorganization and issued its injunction

against the proposed sale of its assets and real estate in the said proceeding in bankruptcy in the Indiana Court.

3.) That a certified copy of said decree and injunction was lawfully served upon the said Sansberry, Indiana Trustee, and his auctioneer, before the proposed sale was cried on April 20, 1944.

4.) That upon said service and notice, jurisdiction over the assets of said National Aircraft Corporation vested exclusively in this Court to the exclusion of further proceeding in said Bankruptcy Court in Indiana. That thereupon, in contempt of the injunction and Order of this Court, the said Trustee and his auctioneer proceeded to cry the sale of said real estate and receive bids for said property, and reported that one Green, an agent for the petitioning trust estate, hereinafter called the petitioners, was the highest and best bidder. That thereafter, on May 5th, 1944, and before said sale was consummated, said Duggan, Trustee in reorganization by Order of this Court, caused a certified copy of the Order and decree of this Court to be duly recorded in the office of the Recorder of Deeds for Madison County, Indiana, the County wherein the said real estate was located.

5.) That thereafter, the said petitioners, in contempt of the Order of this Court, undertook to consummate a sale of said property, and on June 15, 1944 received from said Sansberry a purported Trustee's Deed for said property, which they caused to be recorded on June 29, 1944.

6.) That pending litigation on appeal prosecuted by Duggan, its reorganization Trustee, from certain Orders entered by the Bankruptcy Court in Indiana, subsequent to the aforesaid judgment and decree of this Court, the [fol. 48] said petitioners without any Order of this Court, and without the authority of any valid Order of any Court, entered into possession of said real estate and continued in the exclusive possession thereof, without the authority of this Court or its Trustee until May 6, 1946. That during all that time the said petitioners were, against the will of this reorganization Trustee, in the actual possession and

control of said real estate. That during approximately eleven months of such period, the said petitioners utilized said premises for carrying on certain business activities on their own behalf, and subsequently, for a period of about twelve months, rented or leased the same to the Argonaut Division of the General Motors Corporation, at a rental of $15,000.00 per year, or $1,250.00 per month, as a result of which the said petitioners collected rents in the net sum of $12,377.50.

7.) That the value of the use of said property for the period involved, and the unjust appropriation by the petitioners amounted to the approximate sum of $28,000.00 for which sum the petitioners are lawfully and equitably indebted to this reorganization Trustee for the benefit of the estate of the subsidiary debtor.

8.) And this defendant further states that after recovery of the actual possession of said property by its Trustee on March 6, 1946, he allowed the Argonaut Division of the General Motors Corporation to continue in possession of said premises until some time in December, 1946, on an agreement that they would impound the sum of $1,250.00 per month for the rent or use of said premises until they finally vacated, and that as a result of said agreement, the said Argonaut Division of the General Motors Corporation paid over to this Trustee the sum of $8,799.35, constituting the fund which the petitioners pray for an Order of delivery to them as owners thereof, and this cross-claimant states that the petitioners have no [fol. 49] right or interest of ownership in said fund, and that the same is lawfully the property of this Trustee in reorganization for the National Aircraft Corporation, subsidiary debtor.

Wherefore, as such Trustee, this cross-claimant prays judgment against the petitioners for the sum of $28,000.00, representing the value of the use of said real estate while the petitioners were in the unlawful possession thereof, and the cross-claimant further prays that he be declared the owner of the said sum of $8,799.35 heretofore delivered to him, as aforesaid, free from any claim or demand of the

petitioners. And defendant states, on information and belief, that in addition to its unlawful possession and user of said real estate, petitioner unlawfully and contemptuously assumed to take possession of personal property of the subsidiary debtor, and sell or dissipate the same, and convert the same to petitioner's unjust enrichment, for which defendant might lawfully claim compensation, the amount and value of which is unknown to the defendant, but is known to the petitioners. Wherefore, defendant further prays discovery of the petitioner of the amount and value of such personal property, and the circumstances under which the same was purportedly bought and disposed of by petitioner, and that defendant have judgment against petitioner for the value thereof when ascertained.

George O. Durham
315 N. 7th Street,
St. Louis 1, Missouri.

Attorney for Jerome F. Duggan, Trustee in Reorganization, etc.

Jerome F. Duggan,
Trustee in Reorganization.

Filed in United States District Court May 25, 1955.

[fol. 50] (Answer and Exceptions of Benjamin S. Mesirow As Trustee under Trust No. 140 to Counterclaim of National Aircraft Corporation, Subsidiary Debtor, by Jerome F. Duggan, Its Trustee in Bankruptcy.)

Now comes Benjamin S. Mesirow, Trustee under trust agreement known as Trust No. 140 and respectfully represents and states unto this honorable court as and for his answer to counterclaim filed by Jerome F. Duggan, trustee in reorganization of National Aircraft Corporation, subsidiary debtor, as follows:

1. Petitioner admits the allegations in paragraph 1 of said counterclaim.

2. Petitioner admits the allegations of paragraph 2 of said counterclaim.

3. Petitioner is without knowledge of facts sufficient to form a belief as to the truth of the allegations of paragraph 3 of said counterclaim and therefore denies the same.

4. Answering paragraph 4 of said counterclaim, this petitioner admits that the said trustee in reorganization, one Sansberry, who had been appointed trustee in bankruptcy for said National Aircraft Corporation by the District Court of the United States for the Southern District of Indiana, Indianapolis Division, Cause No. 9401 in bankruptcy, and his auctioneer proceeded to cry the sale of said real estate and received bids for said property and reported [fol. 51] that one Charles Green, one of the beneficiaries of petitioner's Trust No. 140 was the highest and best bidder, and denies each and every other allegation therein contained.

5. Petitioner denies each and every allegation of paragraph 5 of said counterclaim except that said Sansberry, as trustee in bankruptcy, did execute and deliver his trustee's d ed to the said property to the petitioner.

6. Petitioner denies each and every allegation contained in paragraph 6 of said counterclaim except that he took possession of said premises and remained in possession thereof until on or about the 6th day of March, 1946; and that during some of that time said premises were leased to the Argonnaut Division of General Motors Corporation.

7. Petitioner denies each and every allegation contained in paragraph 7 of said counterclaim.

8. Petitioner admits each and every allegation contained in paragraph 8 of said counterclaim except the allegation that petitioners have no right or interest of ownership in said fund, and that the same is lawfully the property of this trustee in reorganization for the National Aircraft Corporation, which allegation petitioner denies. For fur-

ther answer to paragraph 8 of said counterclaim petitioner reasserts the allegations contained in paragraph 21 of his petition filed herein and expressly makes said allegation a part hereof of his answer and exceptions.

Wherefore, having fully answered this counterclaim, [fol. 52] petitioner prays that said counterclaim be dismissed and he recover his costs herein expended.

Lashly, Lashly & Miller
Israel Treiman
Elihu M. Hyndman
705 Olive Street
St. Louis 1, Missouri
MAin 1-2939
Attorneys for Petitioner

Filed in United States District Court October 19, 1955.

[fol. 53] (Motion to Join Additional Parties Defendant in the Matter of the Petition of Benjamin S. Mesirow, etc., and the Counterclaim Thereto of Jerome F. Duggan, Trustee.)

Comes now Jerome F. Duggan, Trustee, and shows to the Court that he has ascertained that one Charles J. Green, whose residence is unknown at present to the Trustee, is a proper party and with Benjamin S. Mesirow, Trustee, is liable to the estate of the subsidiary debtor, in accordance with the demands asserted in this Trustee's counterclaim filed therein.

And this Trustee shows that the said Charles J. Green was a party to the violation of this Court's jurisdiction and injunction, as set forth in this Trustee's counterclaim, and in unlawfully interfering with this Court's control and jurisdiction of the real estate described in said petition and counterclaim, and was a party to the unlawful taking of the personal assets of the subsidiary debtor and in converting to his own use or to the use of his associates, the ma-

chinery, tools, equipment and personal property of the subsidiary debtor located at or in the vicinity of Elwood, Indiana, purported to be by virtue of a void order of a Referee of the Bankruptcy Court of the Southern District of Indiana. That in addition to the control and possession of said real estate he, the said Charles J. Green, in cooperation with said Benjamin S. Mesirow and others, took possession of all the personalty of the subsidiary debtor, the exact description of which is unknown to this Trustee, but is known to said Benjamin S. Mesirow, Trustee, and the said Charles J. Green. That subsequently the said Benjamin S. Mesirow and Charles J. Green sold all said personal property for a large sum of money and converted the same to their own use and have failed to account to this Trustee for the same.

[fol. 54] Wherefore, this Trustee prays that said Charles J. Green be joined as an additional defendant to the Trustee's counterclaim aforesaid and be required to make discovery of all the facts within his knowledge pertaining to said conversion and sale of said property and the sums realized therefrom by said defendants.

And that an order be entered accordingly requiring the said Charles J. Green to appear at a time fixed by the Court and answer said counterclaim and that the Court direct the manner in which the said Charles J. Green shall be notified of the Court's action.

Respectfully submitted.

Jerome F. Duggan, Trustee.
George O. Durham

and

Eugene M. Munger,
Attorneys for Trustee.

Subscribed and sworn to before me this day of November, 1955, by Geo. O. Durham, Atty.

Filed in United States District Court November 17, 1955.

[fol. 55] (Order of Court.)

It appearing from the motion of Jerome F. Duggan, Trustee, that Charles J. Green participated with Benjamin S. Mesirow and others, in violation of this Court's order and injunction dated April 19, 1944, by entering upon certain real estate within the jurisdiction of this Court and in converting to his own use certain personal property of the subsidiary debtor in the State of Indiana and selling the same to his own profit and is liable to the subsidiary debtor estate for the value of said personal property and for his profits thereon, and is liable to make discovery, all as set forth in the motion of Jerome F. Duggan, Trustee, to join him as a defendant to said counterclaim and in said counterclaim, it is

Ordered that said Charles J. Green be joined as a defendant to said counterclaim and that the said counterclaim stand amended by inserting the name of Charles J. Green as an additional defendant thereto And it is further

Ordered that a copy of this order, together with a copy of said counterclaim, be served upon said Charles J. Green and that he serve a copy of his answer thereto within twenty (20) days upon Jerome F. Duggan, Trustee, or his counsel of record.

George H. Moore, Judge.

Filed in United States District Court, November 17, 1955.

[fol. 56] (Memorandum, Findings of Fact and Conclusions of Law.)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

In the matter of THE CHRISTOPHER ENGINEERING COMPANY, a corporation, Principal Debtor, THE NATIONAL AIRCRAFT CORPORATION, Subsidiary Debtor, IN RE PETITION OF BENJAMIN S. MESIROW, TRUSTEE, Complainant.	In Bankruptcy, No. 10947 Court No. 1.

Benjamin S. Mesirow, as trustee for Charles J. Green and others, complains and prays the Court for an order confirming his alleged ownership of certain real estate located in the City of Elwood, in Madison County, Indiana, and for equitable relief.

The real estate involved is in possession of Jerome F. Duggan, Trustee for the National Aircraft Corporation, the subsidiary debtor in this proceeding.

The trustee for the subsidiary debtor controverts complainant's alleged title and, alleging that complainant, without lawful authority and by trespass, and in contempt of this Court's exclusive jurisdiction, took possession of the real estate involved herein on June 15, 1944, and used and exploited it until May 6, 1946, has filed a counterclaim against complainant for his damages in the sum of $28,000.00.

The complainant asserts title by virtue of proceedings for the sale of the National Aircraft Corporation's property had in the District Court of the United States for the Southern Judicial District of Indiana, in which proceeding James C. Sansberry, as trustee in bankruptcy, on June 15, 1944, purported to consummate a sale of the property in- [fol. 57] volved herein by executing his deed to the complainant therefor and delivering the property to him, which possession the complainant retained until May 6, 1946, when

this Court's trustee, Jerome F. Duggan, entered and took over the possession of said real estate, which possession he has ever since maintained.

The trustee for the subsidiary debtor claims title and possession by virtue of a decree and order of this Court dated April 19, 1944 approving a petition of the subsidiary debtor for relief under Chapter X of the Bankruptcy Act and appointing him trustee and enjoining further proceedings in ordinary bankruptcy pending against the subsidiary debtor under Chapters I to VII of the same act, being the proceeding under which the complainant asserts title.

The controversy arises over the fact that before the alleged sale under which complainant asserts title was begun or consummated this Court, in a proceeding under Chapter X of the Bankruptcy Act, received and approved the petition of the subsidiary debtor, the National Aircraft Corporation, filed under Chapter X of the Act, and enjoined the Bankruptcy Court in Indiana from proceeding further in the ordinary bankruptcy proceeding under which the complainant claims title. The officers of the Indiana Court elected to disregard this Court's decree and injunction and to proceed and sell the subsidiary debtor's assets, which resulted in a clash of jurisdictions between this Court over the assets of the subsidiary debtor under the provisions of Chapter X of the Bankruptcy Act and the jurisdiction of the Indiana Court to proceed to sell the same assets in a proceeding pending before it under Chapters I to VII of the Act. This clash of jurisdictions was resolved and settled in favor of this Court's jurisdiction by the United States Supreme Court in a proceeding between Jerome F. Duggan as Trustee for the subsidiary debtor by appointment of this Court and James C. Sansberry as Trustee in [fol. 58] bankruptcy for the National Aircraft Corporation under the proceeding pending in the Indiana Court. Duggan v. Sansberry, 327 U. S. 499; 90 L. Ed. 809.

This Court derives its general jurisdiction for its organization as a District Court of the United States and its jurisdiction as a court of bankruptcy from Section 2(a) (11 USC 11) of Chapter II of the same Act. Its jurisdiction to approve petitions for corporate reorganization and to administer the reorganization act is found in Chapter X of

the Bankruptcy Act. Section 128 (11 USC 529) of the Act authorizes a subsidiary debtor to petition this Court, and Section 141 (11 USC 541) of the Act provides that without process upon anyone and necessarily ex parte, the Court, if satisfied that a petition complies with the requirements of Chapter X and that it was filed in good faith, shall approve the petition, and, if not so satisfied, shall dismiss it.

Exclusive jurisdiction of the debtor and its property, wherever located, is vested in the Court upon the filing of a petition (Section 11 (11 USC 511)), and even before approval of the petition, the Court may enjoin a prior pending proceeding in bankruptcy (Section 113, 11 USC 513).

The Court finds that it had jurisdiction to admit the National Aircraft Corporation to reorganization and to enjoin proceedings pending in the Indiana Court.

The complainant undertakes to controvert the allegations of the subsidiary's petition, and to contest this Court's decree, injunction and jurisdiction on the facts.

When the petition was filed and approved, complainant was devoid of any interest in the subject matter and without authority to controvert the allegations of the petition or to contest the facts on which this Court entered its decree and injunction.

Subsequently, complainant for the purpose of speculation and in contempt of this Court's decree and injunction, procured from unauthorized sources a purported title to the property of the subsidiary debtor then by operation of [fol. 59] law in the exclusive possession of this Court. That purported title he seeks to exploit, either by an Order of this Court confirming it, or denying its jurisdiction over it. In that connection, under the guise of a feigned attack on this Court's jurisdiction, he undertakes to controvert the allegations of the petition and to contest this Court's decree and injunction on the facts.

The Court finds that the complainant was without interest in the subject matter when this Court entered the decree and injunction aforesaid, and because of said lack of interest, the complainant could not then and may not

On Apri 19, 1944, the National Aircraft Corporation in its corporate capacity filed its petition in this Court alleging itself to be a subsidiary of the principal debtor and, reciting that it had been adjudicated a bankrupt in an involuntary proceeding instituted and pending in the Indiana Court, and that James C. Sansberry, as trustee for the bankrupt, had advertised and would sell its assets unless enjoined, prayed that its petition be approved and the Indiana proceedings and the impending sale enjoined.

On the same 19th day of April, 1944, this Court heard the petition ex parte and found the corporate petitioner to be a subsidiary of the principal debtor and that its petition compiled wih the requirements of Chapter X of the Bankruptcy Act and had been filed in good faith. It thereupon approved the petition and enjoined further proceedings in the Indiana Court and specifically enjoined the impending sale. A certified copy of this Court's decree and injunction was duly served upon James C. Sansberry as trustee and his auctioneer on April 20, 1944, before the threatened sale commenced.

While this Court's injunction was specifically directed to Mr. Sansberry as trustee and his auctioneer by name, the Supreme Court in Duggan v. Sansberry case aforementioned ruled that it was effective against the whole [fol. 61] proceeding pending in the Indiana Court and effective to stay the proceedings in the latter Court.

On April 20, 1944, Mr. Sansberry, the Indiana Trustee, elected to proceed with the sale as advertised, despite this Court's decree and injunction.

On April 21, 1944, Mr. Sansberry reported his proceedings to Mr. Wilde, the Referee, and reciting therein service of this Court's decree and injunction upon him before the sale commenced, recited that he, on the advice of his counsel and with knowledge of the Referee, had proceeded with the sale as advertised, announcing to the public, however, that the sale would be reported subject to confirmation by the Referee. He reported that Charles J. Green was the highest and best bidder for the real estate involved herein. The matter of the trustee's report and confirmation of the sale was set for hearing before the Referee on April 25, 1944.

The matter of the confirmation of the trustee's report came on for hearing before the Referee on April 25, 1944. The Referee reported that Mr. Sansberry, the Trustee, and his counsel intended to go to St. Louis to investigate the facts surrounding the entry by this Court of its decree and injunction and, in view of that fact, thereupon continued the hearing until May 2, 1944.

On May 2, 1944, the matter of the trustee's report again coming on for hearing, the Referee reported that Mr. Sansberry and his counsel reported that they had gone to St. Louis and made some investigation of the facts and circumstances surrounding the entry of this Court's decree and injunction and had consulted various persons, but had not submitted themselves to the jurisdiction of this Court, all conferences having been informal.

The Referee thereupon approved the Trustee's report and by order dated May 3, 1944, authorized him to consummate the sale of the real estate involved herein to Charles J. Green and to execute a deed and deliver possession of [fol. 62] the property to the purchaser upon receipt of the purchase price.

On May 5, 1944, a certified copy of this Court's decree and injunction was, by authority of Section 21(g) (11 USC 44) duly filed for record in the Office of the Recorder for Madison County, Indiana, the County in which the real estate involved herein was located.

Thereupon Jerome F. Duggan, as Trustee for the subsidiary debtor, and the subsidiary debtor on its own behalf and in its corporate capacity, duly petitioned for a review by the Judge of the Referee's order authorizing the consummation of the sale and filed their separate motions for a stay of proceedings based upon this Court's decree and injunction and the superseding jurisdiction of this Court.

Being cast on their petition for review by the Judge and on a subsequent appeal to the Court of Appeals for the Seventh Circuit, the Trustee for the subsidiary debtor and the debtor, in its corporate capacity, successfully invoked the jurisdiction of the Supreme Court to settle the clash of jurisdictions, as aforesaid, and to review the power of the Indiana Court to sell the subsidiary debtor's property,

PETITIONER'S EXHIBIT 1.

By Order of the United States District Court

Auction

THURSDAY, APRIL 20
1944, AT
9:30 A.M., C.W.T.

IN THE MATTER OF THE
National Aircraft Corporation
IN BANKRUPTCY
450 NORTH 9th STREET
ELWOOD, INDIANA

Auction

THURSDAY, APRIL 20
1944, AT
9:30 A.M., C.W.T.

METAL WORKING MACHINERY

1—Atlas Milling Machine No. MF001478, complete with motor, vise, arbors and guards.
1—Atlas Bench Shaper, complete with rotary vise, motor and guards.
2—Logan Model 200 Lathes, fully equipped with chucks, motors, collets, draw bars, etc.
1—Wells Metal Band Saw, 8 M. 42" with Peerless ½ HP motor.
1—Marvel No. 2 Metal Hack Saw with ½ HP B-Line Motor.
1—Catskill Tubing Cutter complete with 3 HP motor, Model 0-2-501.
2—Boice-Crane Electric Bench Drills, swinging tables, ½" capacity, with ½ HP motors.
3—Delta Electric Bench Drills, swinging tables and motors.
2—Walker Turner Electric Bench Drills, swinging tables and motors.
1—Atlas Electric Bench Drill, swinging table and motor.
1—Craftsman Electric Bench Drill, swinging table and motor.
1—Dunlap Electric Bench Drill, swinging table and motor.
1—Buffalo No. 16 Pedestal Drill Press with ½ HP motor, table size 24"x24", adjustable.
1—Black Diamond Drill Grinder with collet holders and motor, 82 collets.
2—Clark Jr. Electric Grinders with motors and eye shields.
1—Black & Decker 10" Electric Bench Grinder, 1 HP motor.
1—Craftsman Pedestal Electric Grinder, ½ HP motor.
4—Peerless ½ Ton Chain Hoists.
2—Spur Geared Chain Hoists and Trolleys.
7—Electric Drills.
1—Oliver Bench Filer with motor and stand.
1—Curtis Air Compressor, with receiver and Lima 10 HP motor and Texrope drive.
1—General Electric A.C. Arc Welder, portable, generator 25 volt, 3500 speed, 150 amp.
1—Hollup Electric A.C. Welding and Cutting Unit, 45 amp., 10 K.V.A., 220 volt.
1—Hollup A.C. Welder, Model N-20.
1—Floor Type Screw Press.
1—Surface Plate 36"x60".
2—Surface Plates.
5—Electric Motors.
2—Parker Tube Benders.

Metal Working Tools and Supplies, New and Used, such as:

10" shaper vise, swivel bench vises, Morgan & Prentice vises, electric band saw welder, hand electric grinders, small bench grinders, high speed milling cutters and slitting saws, H. S. drills, H. S reamers, centers, grinding wheels, air hose, rubber belts, belt hooks, midge cutters, waste cans, shop stools, shop benches, machine bases, metal band saw blades, clipper belt lacer, degreasing tank, exhauster system, die sets, die handles, center rests, drill chucks, fractional and letter drills, adjustable dies, card cutters, card taps, burring tools, taper drills, spur drills, Nicholson files, wood rasps, lathe dogs, metal blades, figure dies, stencil sets, steel brushes, edge steel, drill rod, pliers, socket wrenches, clamps, hammers, welding rod, oil cans, grease guns, paint brushes, flint torches, goggles, soaps, tissue, rivets, screws, nuts, bolt, buffing wheels, stencil brushes, nails, punches, open end wrenches, cap screws, stove bolts, and many other items.

Precision Tools such as:

Vernier height gauges, radius gauges, Vernier calipers, hole gauges, inside and outside micrometers, protractors, slide calipers, outside calipers, combination square blades, Starret protractors, steel tapes, 12" inside calipers, plug gauges, dial test indicator, etc.

A QUANTITY OF STEEL BAR STOCK, SHEET STEEL, DIE SHOES, SHEET ALUMINUM, ETC.

ELECTRICAL SUPPLIES

Insulated wire, wire cable, strand wire, Romex conduit, conduit pipe, lamp cord, cable clips, sockets, outlet boxes, switch boxes, conduits, lamp bulbs, lighting fixtures, reflectors, humidity controls, renewal links, fuse plugs, fuses, insulators, bushings, control switches, nipples, angles, lamp brackets, gamewell fire stations, Trumbull, Appleton and Square D switches, fluorescent lamp renewals, small motors, motor frames, pipe straps, box covers, holders, guards, lock nuts, sealing compound, A. B. starters and switches, friction tape, flux, bushings, pole switches, conductor and rubber covered wire, duplex outlets, twistlock caps, enameled covers, mogul bases and numerous other supplies.

PLYWOOD AND LUMBER

515—Sheets mahogany plywood, various sizes up to 48"x96".
270—Sheets gum plywood, various sizes up to 48"x60".
3300—Spruce lumber.
Also Masonite, fir plywood, veneer strips, case veneers, pine flooring, etc.

WOODWORKING MACHINERY

1—Ekstrom-Carlson No. 232 Electric Router No. 28278, 10,00 to 20,000 R.P.M.
1—American Two Spindle Shaper, B.B., with two 3 H.P. Woods motors, 3600 R.P.M., and switches.
6—Delta Tilting Arbor Saws, "Unisaw" door type, complete with gauges, guards, A.B. switches, blade and 1½ H.P. motors.
1—Walker-Turner Tilting Arbor Saw, floor type, with gauges, guards, and 1½ HP Driver motor.
1—Monarch Cut-Off Saw, radial type, No. X36A, with 1 HP motor, switch and bench.
2—Delta Electric Single Spindle Shapers, 27"x28" tables, complete with 1½ HP motors, A.B. switches, etc.
1—Yates Combination Belt and Disc Sander, J47, with 1 HP motor and switch.
1—Porter Round Head Jointer, 20" capacity, with 5 HP motor and switch.
3—Delta 6" Hand Jointer with stand and ¾ HP motor.
1—Oliver 24" Round Head Planer, with 5 HP motor and switch.
1—Parks 12" Round Head Planer, with motor and switch.
1—Powermatic 16" Round Head Planer, with 5 HP motor and switch.
1—Boice-Crane 10" Planer with motor and switch.
1—Delta 14" Band Saw, ¾ HP motor and guard.
10—Delta Electric Bench Sanders with ¾ HP motors and switches.
2—Delta Electric Bench Band Saws with motors and stands.
1—Crescent 24" Band Saw with 1½ HP motor and switch.
2—Delta Tilting Table Bench Saws, with ¾ HP motors, switches and benches.
2—Craftsman's 14" Bench Type Band Saws.
1—Duro Electric Hand Router.
1—Carter Electric Hand Scarfer.
4—Electric and Air Manual Sanders.

2—Clark Jr. Electric Grinders with motors and eye shields.
1—Black & Decker 10" Electric Bench Grinder, 1 HP motor.
1—Craftsman Pedestal Electric Grinder, ½ HP motor.
4—Peerless ½ Ton Chain Hoists.
2—Spur Geared Chain Hoists and Trolleys.
7—Electric Drills.
1—Oliver Bench Filer with motor and stand.
1—Curtis Air Compressor, with receiver and Lima 10 HP motor and Texrope drive
1—General Electric A.C. Arc Welder, portable, generator 25 volt, 3500 speed, 150 amp.
1—Hollup Electric A.C. Welding and Cutting Unit, 45 amp., 10 K.V.A., 220 volt.
1—Hollup A.C. Welder, Model N-20.
1—Floor Type Screw Press.
1—Surface Plate 36"x60".
2—Surface Plates.
5—Electric Motors.
2—Parker Tube Benders.

Metal Working Tools and Supplies, New and Used, such as:

10" shaper vise, swivel bench vises, Morgan & Prentice vises, electric band saw welder, hand electric grinders, small bench grinders, high speed milling cutters and slitting saws, H. S. drills, H. S reamers, centers, grinding wheels, air hose, rubber belts, belt hooks, midge cutters, waste cans, shop stools, shop benches, machine bases, metal band saw blades, clipper belt lacer, degreasing tank, exhauster system, die sets, die handles, center rests, drill chucks, fractional and letter drills, adjustable dies, card cutters, card taps, burring tools, taper drills, spur drills, Nicholson files, wood rasps, lathe dogs, metal blades, figure dies, stencil sets, steel brushes, edge steel, drill rod, pliers, socket wrenches, clamps, hammers, welding rod, oil cans, grease guns, paint brushes, flint torches, goggles, soaps, tissue, rivets, screws, nuts, bolt, buffing wheels, stencil brushes, nails, punches, open end wrenches, cap screws, stove bolts, and many other items.

Precision Tools such as:

Vernier height gauges, radius gauges, Vernier calipers, hole gauges, inside and outside micrometers, protractors, slide calipers, outside calipers, combination square blades, Starret protractors, steel tapes, 12" inside calipers, plug gauges, dial test indicator, etc.

A QUANTITY OF STEEL BAR STOCK, SHEET STEEL, DIE SHOES, SHEET ALUMINUM, ETC.

ELECTRICAL SUPPLIES

Insulated wire, wire cable, strand wire, Romex conduit, conduit pipe, lamp cord, cable clips, sockets, outlet boxes, switch boxes, conduits, lamp bulbs, lighting fixtures, reflectors, humidity controls, renewal links, fuse plugs, fuses, insulators, bushings, control switches, nipples, angles, lamp brackets, gamewell fire stations, Trumbull, Appleton and Square D switches, fluorescent lamp renewals, small motors, motor frames, pipe straps, box covers, holders, guards, lock nuts, sealing compound, A. B. starters and switches, friction tape, flux, bushings, pole switches, conductor and rubber covered wire, duplex outlets, twistlock caps, enameled covers, mogul bases and numerous other supplies.

PLYWOOD AND LUMBER

515—Sheets mahogany plywood, various sizes up to 48"x96".
270—Sheets gum plywood, various sizes up to 48"x60".
3300—Spruce lumber.
Also Masonite, fir plywood, veneer strips, case veneers, pine flooring, etc.

1—Powermatic 16" Round Head Planer, with 5 HP motor and switch.
1—Boice-Crane 10" Planer with motor and switch.
1—Delta 14" Band Saw, ¾ HP motor and guard.
10—Delta Electric Bench Sanders with ¾ HP motors and switches.
2—Delta Electric Bench Band Saws with motors and stands.
1—Crescent 24" Band Saw with 1½ HP motor and switch.
2—Delta Tilting Table Bench Saws, with ¾ HP motors, switches and benches.
2—Craftsman's 14" Bench Type Band Saws.
1—Duro Electric Hand Router.
1—Carter Electric Hand Scarfer.
4—Electric and Air Manual Sanders.

2—Universal Routers.
1—Folly Band Saw Filer, motor driven, with ¼ HP motor.
1—Hydraulic Press with Blackhawk pump and 6 Blackhawk hydraulic cylinders.
1—Francis Veneer Screw Press with extra screws.
8—DeVilbiss Paint Spray Mixers.
6—DeVilbiss Spray Guns.

Large quantities of New and Used Woodworking Tools and Supplies such as:

Router bits, dado blades, table and band saw blades, wood drills, drill blanks, auger bits, "V" belts, steel clamps, center drills, handles, shaper knives, planer knives, spray mixers, pressure gauges, Clark automatic drills, spray guns, spoke shavers, hand planes, staplers, air sanders, saw sets, saw setters, glue brushes, mitre saws, exhaust fans, up saw blades, dowel pins, brads, etc.

A large lot of sandpaper sheets and belts, sanding cloths, masking tape, grit belts, rolled tapes, garnet paper, sandpaper and emery discs, abrasive discs, Durite cloth, Alundum and Closekote belts, fibre discs, metal cloth.

AUTO TRUCKS — AEROPLANE

1—International Auto Truck, 1½ Ton Cab over engine, No. KS-5-600—1942, with Stake Body.
1—International Auto Truck, 1 Ton, low Stake Body, No. K3—1941.
1—Curtis-Robin Aeroplane. (Subject to C.A.A. regulations.)

MISCELLANEOUS EQUIPMENT AND SUPPLIES

(NEW AND USED)

1—Bogen Electric Call System with Amplifiers and Stations.
1—Surveyor's Set.
3—International Time Clocks.
2—Simplex Electric Time Clocks.
1—Singer Electric Sewing Machine No. 134W5 with individual setting and taping arm.
1—Singer Electric Sewing Machine No. 241-2 with individual setting.
1—Singer Electric Sewing Machine No. 112W140 with individual setting.
3—Fairbanks Platform Scales.
1—Marsh Stencil Machine.
66—Fluorescent Lighting Fixtures.
36—Sod-Acid Fire Extinguishers
20—Skid Platforms, steel banded.
72—Grinding Wheels, new, mounted and unmounted.
46—Workmen's Masks.
41—Respirators, DeVilbiss and Filtaire.
56—Tack Pullers. 32—Explosion Proof Lights.
365—Lbs. Shim Stock. 16—Kilard Explosion Proof Lights.
650—Lbs. Welding Rod. 600—Ft. New Fire Hose.
300—Lbs. Drill Rod. 30—Fire Stations with hose and nozzles.
3—Center Heads. 600—Electric Lamp Bulbs, 25 to 100 watt.
22—Dozen Tweezers. 5000—Corrugated Cartons and Dividers.
6—Sets Micropress Tools. 3—Modine (New) Unit Heaters.
Ladders, truck racks, foreman's tables, shop tables, bins, racks, lift trucks, platform trucks, electric heaters, Toledo scale.

brads, etc.

A large lot of sandpaper sheets and belts, sanding cloths, masking tape, grit belts, rolled tapes, garnet paper, sandpaper and emery discs, abrasive discs, Durite cloth, Alundum and Closekote belts, fibre discs, metal cloth.

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22—Dozen Tweezers. 5000—Corrugated Cartons and Dividers.
6—Sets Micropress Tools. 3—Modine (New) Unit Heaters.
Ladders, truck racks, foreman's tables, shop tables, bins, racks, lift trucks, platform trucks, electric heaters, Toledo scale.

MOST OF THIS MACHINERY PURCHASED WITHIN THE PAST TWO YEARS

Real Estate and Office Fixtures on Back Page

now contest the allegations aforesaid or contest this court's decree and injunction under the pretense of a jurisdictional attack.

Section 141 (11 USC 541) of this Act contemplates the approval of a voluntary petition ex parte without process on anyone. Complainant had no interest in the subject matter of the petition, and hence was not deprived of any constitutional right by the ex parte hearing.

Congress was careful to safeguard the rights of persons having an actual interest in the subject matter and provided that creditors, indenture trustees, or, if the corporation was not insolvent, a stockholder might appear and controvert the allegations of the petition, even after it was approved. (Section 137 (11 USC 537)).

Complainant was neither a creditor, indenture trustee nor stockholder of the debtor, hence could not have objected to or controverted the allegations of the petition had he appeared while consideration of the petition was pending. He could not, by his contempt of this Court's order and injunction, put himself in a more favorable position than he would have occupied, had he honored it.

The Court further finds that:

On December 27, 1943, this Court approved the voluntary petition of the principal debtor for relief under Chapter X of the Bankruptcy Act and appointed Jerome F. Duggan [fol. 60] Trustee.

On January 21, 1944, an involuntary petition in bankruptcy was filed in the District Court of the United States for the Southern Judicial District of Indiana against the National Aircraft Corporation under Chapters I to VII of the Act, and such proceedings were had that the cause was referred to Carl Wilde, the Referee in Bankruptcy for said Court, and James C. Sansberry was appointed Trustee for the bankrupt.

Subsequently Mr. Sansberry procured from his Referee an order to sell the assets of the National Aircraft Corporation, including the real estate involved herein, and set and advertise his sale to commence at 9:30 A. M. on April 20, 1944.

as a result of which the Supreme Court, as hereinbefore stated, affirmed the power of this Court and struck down the power of the Indiana Court to proceed after notice of this Court's decree and injunction to sell the subsidiary's property.

Following the order of the Referee dated May 3, 1944, confirming and authorizing the consummation of the alleged sale, and while it was pending on appeal, James C. Sansberry, the Trustee, undertook to carry out the order of the Referee and on June 15, 1944, he and the complainant formally consummated the sale and a deed and possession of the property was delivered to the complainant.

[fol. 63] The complainant immediately took possession of the property and used and exploited it until Jerome F. Duggan, as Trustee for the subsidiary debtor, got possession of the property from the complainant's tenant on May 6, 1946, upon the mandate of the Supreme Court coming down.

On his testimony that he did not hear of this Court's decree and injunction until some two years after the alleged consummation of the sale to him by Mr. Sansberry, the complainant urges that he is an innocent and bonafide purchaser of the real estate involved and entitled to relief.

Regardless of actual knowledge, the complainant was charged with knowledge thereof by operation of law from the fact that notice thereof appeared in the orders of the Indiana Court constituting his chain of title and the fact that a copy of this Court's decree and injunction was recorded in the Recorder's Office for Madison County on May 5, 1944, under the provisions of Section 21 (g) (11 USC 44) of the Act, some forty days prior to the consummation of the sale under complainant's claim.

The Court further finds that an order of the Referee confirming the sale and authorizing its consummation was a necessary step in the chain of title on which complainant relies. The order was appealed and never became binding or effective. Accordingly, and regardless of the so-called clash of jurisdiction between the Courts, the title on which the complainant relies for relief was void and of no effect in any event.

The Court finds that by undertaking to consummate with Mr. Sansberry the said purchase and sale, and in entering into possession of the property involved and maintaining such possession without the consent of this Court or its Trustee, that the relationship of the petitioner to the property in question was in effect that of a contemnor, interloper, trespasser and volunteer, and that the complainant derived no rights thereby either legal or equitable or en- [fol. 64] forcible against the real estate involved herein or against the assets of the subsidiary debtor in the exclusive possession and jurisdiction of this Court and its Trustee.

The complainant further urges that he was misled and by means of an insufficient abstract furnished him by Mr. Sansberry induced to consummate the alleged sale and pay to Mr. Sansberry the purchase price, and by what he characterizes as the general rules of equity and common justice, he has an equitable title to the real estate in question, or, in any event, to a return of the money paid by him to Mr. Sansberry from the assets of the debtor.

The judgment which complainant seeks, whether for title to the real estate or for the return of the money paid by him to Mr. Sansberry, is sought not against Mr. Sansberry, but against the estate of the debtor or against Jerome F. Duggan, its Trustee. He did not acquire the property by any act of the debtor or of Mr. Duggan. The proceeding in bankruptcy in question was involuntary. Complainant paid Mr. Duggan no money, nor was Mr. Duggan authorized by any order of this Court to sell all or any part of the property to the petitioner or to ratify such sale in consideration of any money. On the contrary, the petitioner paid the consideration, if any, for the unauthorized consummation of sale, to Mr. Sansberry and the complainant, against the will of this Court and its Trustee, received from Mr. Sansberry the possession of the real estate and retained and exploited it against the authority and will of this Court for nearly two years.

On the basis of his denial of actual knowledge until some two years after the consummation of the alleged sale and his entry into possession of the real estate involved, and on the theory that he is an innocent purchaser of the prop-

erty from Mr. Sansberry, he claims some equity in the property.

Regardless of the truth or falsity of his denial of any actual knowledge, it appears, as heretofore found by the Court, that the complainant was charged wtih knowledge [fol. 65] thereof by operation of law. In any event, it appears from the record and complainant's evidence that he had been a practicing lawyer at the Chicago Bar since 19[illegible] that Mr. Green and his several associates and beneficiaries had for a long time been engaged in attending bankruptcy and liquidation sales of distressed business organizations and purchasing their assets for speculative resale. Prior to consummating the alleged sale the complainant employed a Madison County lawyer, who appeared to be a title examiner as well, to advise him in the consummation of the sale. In view of the evidence it would appear that the petitioner either had acquired actual knowledge of the decree and injunction, or had an amazing ability to avoid acquiring such knowledge. In any event, the Court finds from the evidence that the petitioner's relationship to the property in question was that of a mere volunteer, trespasser and interloper, and that by reason thereof, and by his constructive knowledge from the records under which he claims, that he is barred from equitable relief in this Court.

The petitioner further urges that in any event he paid the purchase price to Mr. Sansberry without consideration and upon fraudulent representations by Mr. Sansberry, and that the money was subsequently paid by Mr. Sansberry to Mr. Duggan, Trustee. By reason thereof petitioner urges that he has an equitable lien upon or a right to a refund of his money from the assets of the debtor in the hands of this Court. He urges that he is only tracing, in accordance with the ordinary rules of equity, the money paid Mr. Sansberry without consideration or by fraud.

Mr. Duggan, after the mandate of the Supreme Court came down, recovered of Mr. Sansberry some fifty thousand dollars, being the unexpended residue of the subsidiary debtor's estate after it had been unlawfully administered by Mr. Sansberry for more than two years and after he had sold large quantities of its assets and expended

large and indefinite sums of money from the assets in his [fol. 66] hands, after he was served with a copy of this Court's decree and injunction.

If the complainant may recover of the assets by reason of equities growing out of his unlawful transactions with Mr. Sansberry, any person who may have had similar transactions with Mr. Sansberry might also recover, or, if Mr. Sansberry had by mistake or excusable error paid money to Mr. Duggan, it is possible that Mr. Sansberry might recover the same, and the fact that this Court might have paid the money back to the complainant would not settle Mr. Sansberry's rights.

At any rate, the petitioner paid nothing to Mr. Duggan and if he paid Mr. Sansberry any money without consideration or by reason of fraud, he has not sued Mr. Sansberry or recovered a judgment therefor against him.

Mr. Sansberry is not a party to this proceeding and it is doubtful if this Court would have jurisdiction of a proceeding by the complainant against Mr. Sansberry to recover for his fraud and unjust enrichment.

Mr. Duggan gets his title from this Court and from the subsidiary debtor by operation of law and does not take title through Mr. Sansberry, nor is he in any sense a successor to Mr. Sansberry, or bound by his obligations.

In the transaction between Mr. Sansberry and the complainant for the consummation of the sale upon which complainant relies, he and Mr. Sansberry were each participants and each was guilty of contempt of this Court's decree and order and were in pari delicto. Even in a direct action between them it is at least doubtful if complainant could prevail against Mr. Sansberry, but in any event that question can only be determined in an action between the complainant and Mr. Sansberry and the complainant may not be permitted to trace assets until he has first obtained a judgment against Mr. Sansberry. In any event, the complainant does not undertake to prove that Mr. Sansberry [fol. 67] is insolvent and that a judgment against him could not be collected, a necessary prerequisite to tracing assets in equity.

This Court in any event finds that the complainant may not recoup his damages from the assets of the subsidiary debtor or from Mr. Duggan as Trustee for the debtor.

Complainant undertakes to challenge Mr. Duggan's administration of the debtor estates and to require an accounting of his administration. The complainant is neither a creditor, debtor or stockholder of the debtor, and his only relationship to the estate is based upon his voluntary acts in violation of this Court's decree and injunction, and he may not meddle in the administration of the estates by Mr. Duggan or require any accounting.

However, in the course of the hearing, it appeared that taxes due the taxing authorities of Indiana on the property involved herein, had become delinquent. Realizing the importance of the collection of their revenues by authorizing taxing authorities, the Court referred the matter to Mr. Duggan to investigate and report, and Mr. Duggan reports that he has satisfied the taxes and is in possession of receipts therefor from the Indiana taxing authorities.

Counsel for complainant declined an opportunity to argue the case at the close of the hearing, and to submit a brief, and stated that they did not desire to furnish the Court any suggestions for his findings and conclusions.

The Court will adhere to his oral and general findings against the petitioner at the close of the hearing and such issues as are not specifically referred to herein are found against the complainant.

On the counterclaim of Jerome F. Duggan, the Court finds that on June 15, 1944, the petitioner unlawfully and in contempt of this Court's jurisdiction and injunction, and without the authority of this Court or its Trustee, took possession of the property involved herein and used and [fol. 68] exploited the same until May 6, 1946, and until dispossessed by this Court's Trustee.

And the Court finds that in taking and retaining possession of said premises the petitioner was a mere interloper, trespasser and volunteer and Jerome F. Duggan, as Trustee, may recover his damages therefor against the petitioner in a sum fixed at $28,000.00.

The Court therefore finds that the evidence is insufficient to warrant any relief to the complainant and concludes that under the evidence and the law that judgment must be entered against him and in favor of the respondent on complainant's petition.

The Court further finds and concludes that under the evidence and the law Jerome F. Duggan as Trustee for the debtor estates, is entitled to recover of the complainant his damages in the sum of $28,000.00.

Decree will be entered accordingly.

This memorandum and the findings and conclusions herein stated may stand as the Findings and Conclusions of this Court under the Federal rules of Civil Procedure, Rule 52.

Dated this 29th day of December, 1955.

(Signed) Geo. H. Moore
United States District Judge

Filed in United States District Court December 29, 1955.

[fol. 69] (Order and Decree.)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

In the matter of THE CHRISTOPHER ENGINEERING COMPANY, a corporation, Principal Debtor, and NATIONAL AIRCRAFT CORPORATION, a corporation, Subsidiary Debtor, BENJAMIN S. MESIROW, Trustee, Complainant. vs. JEROME F. DUGGAN, Trustee, Respondent.	In Reorganization No. 10947—Court No. 1.

Now, on this day, the Court having fully heard and considered the evidence and taken the cause as submitted, it is

Ordered that Complainant take nothing by his complaint and that Respondent have judgment thereon.

It is further

Ordered that the Respondent have judgment against the Complainant on his counterclaim; in the sum of Twenty-Eight Thousand Dollars ($28,000.00) and for his costs, and that execution issue therefor.

It is further

Ordered that Complainant pay the costs of this proceeding.

Dated this 29th day of December, 1955.

(Signed) Geo. H. Moore
U. S. District Judge

Filed in United States District Court December 29, 1955.

[fol. 70] (Notice of Appeal.)

Notice is hereby given that Benjamin S. Mesirow, Trustee under Trust Agreement known as Trust No. 140, in behalf of all beneficiaries of his trust, namely, J. Lee Hackett Co., Charles J. Green, and Earle Hart Woodworking Machine Co., hereby appeals to the United States Court of Appeals for the Eighth Circuit from the final judgment, findings, order and decree of this Court that complainant take nothing by his complaint and that respondent have judgment thereon, and from the further final judgment, findings, order and decree of this Court that respondent have judgment against the complainant on his counterclaim in the sum of Twenty-Eight Thousand Dollars ($28,000.00) and for his costs, and that execution issue thereon, both of

said final judgments, orders and decrees having been entered in this action on December 29, 1955.

Lashly, Lashly & Miller
Israel Treiman
Elihu M. Hyndman
705 Olive Street
St. Louis 1, Missouri
MAin 1-2939

Attorneys for Appellant

Filed in United States District Court January 23, 1956.

[fol. 71] (Designation of Record on Appeal.)

Appellant, Benjamin S. Mesirow, Trustee, designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in this action, said designation to include the complete record and all the proceedings and evidence in the action:

1. Petition of Benjamin S. Mesirow, Trustee under Trust Agreement known as Trust No. 140.

2. Answer, Exceptions and Counterclaim of National Aircraft Corporation, subsidiary debtor, by Jerome F. Duggan, the Trustee in Reorganization.

3. Answer and Exceptions of Benjamin S. Mesirow, Trustee, to Counterclaim of National Aircraft Corporation.

4. Motion of Jerome F. Duggan, Trustee of subsidiary debtor, for leave to join additional party defendant
[fol. 72] to counterclaim of subsidiary debtor, trustee, and order of court granting said motion.

5. Transcript of testimony and proceedings had during hearing on petition of Benjamin S. Mesirow, Trustee under Trust No. 140, on November 17, November 18, and November 21, 1955, a copy of which is filed herewith.

6. Memorandum, Findings of Fact and Conclusions of Law filed December 29, 1955.

7. Judgment, Order and Decree filed December 29, 1955.

8. Notice of Appeal filed January 23, 1956.

9. Clerk's Docket entries, dated:

April 7, 1955
May 25, 1955
October 19, 1955
November 4, 1955
November 17, 1955
November 18, 1955
November 21, 1955
December 30, 1955
January 23, 1956

10. This designation.

Lashly, Lashly & Miller
Israel Treiman
Elihu M. Hyndman
705 Olive Street
St. Louis 1, Missouri
MAin 1-2939
Attorneys for Appellant

Copy of the foregoing Designation of Record on Appeal sent by United States Mail on the ____ day of _____, 1956, to Mr. George O. Durham, 315 North Seventh Street, St. Louis 1, Missouri, Attorney for Jerome F. Duggan, Trustee in Reorganization.

Filed in United States District Court February 6, 1956.

[fol. 73] (Narration of Testimony and Evidence.)

Petitioner's Evidence

"The Court: Are the parties ready?

Mr. Treiman: Petitioner is ready, Your Honor.

Mr. Durham: Before we announce, Your Honor, with Mr. Munger's help I discovered that it is indefinite in the pleading what the extent of this trust represented by Mr. Mesirow is. * * * Now, we know and I filed a counterclaim against the trustee involving the machinery. The trustee, the referee's report up there said the machinery was carried at $42,000. * * * Now Mr. Green I know is concerned in the purchase of that machinery because he bid it in. He also bid in the real estate. The real estate was conveyed to Mesirow as trustee. Now, I have got a counterclaim involving that machinery. It also involves the use of the real estate during the period they held it in violation of your injunction. * * * In view of the fact, and out of precaution I am asking Charles J. Green be made a party defendant to my counterclaim and he be served, unless you want to enter his appearance.

The Court: Who is Mr. Green, a purchaser?

Mr. Durham: Of record, yes.

Mr. Treiman: He was not a purchaser, Your Honor. He was one of the beneficiaries, as I explained, in this [fol. 74] trust. Mr. Mesirow is trustee. Mr. Green is one of three beneficiaries. The title is taken in the name of Mesirow trustee for Trust No. 140.

Mr. Durham: Does that include the machinery, too?

Mr. Treiman: No.

Mr. Durham: That is what I am getting at.

Mr. Treiman: We will bring that out.

Mr. Durham: No, we will bring that out before you start. I have a petition. Will you get it, Gene? He is in town, we can get service on him now, we can't get service on him later, maybe, I don't know. I am going to ask that he be made a party to this counterclaim. I don't know about this claim of Mesirow. I am willing to meet that right now.

* * *

The Court: * * * In any event, you want to be heard, Mr. Treiman, before the Court passes on this?

Mr. Treiman: Your Honor, I do not represent Mr. Green personally. I represent the defendant, Mr. Mesirow, trustee.

The Court: Here is the order he offers me.

(The proposed order was read by the Court.)

The Court: You say you can serve this man at once?

Mr. Durham: He is in court.

Mr. Treiman: Mr. Green is in court and will be a witness in this hearing.

The Court: Very well. I will sign this order.

* * *

Mr. Durham: I have a copy of the counterclaim ready for the clerk. Maybe they will enter their appearance.

Now, Mr. Treiman, will you find out if Mr. Green wants to enter his appearance to this order or shall I go to the trouble of going around to the Clerk?

[fol. 75] Mr. Treiman: I will be glad to discuss that with Mr. Green.

Mr. Durham: How about it, Mr. Green? Will you discuss it?

Mr. Treiman: I will not do it now, no.

Mr. Durham: Then I will go ahead, Judge.

Mr. Treiman: I am not his attorney.

The Court: Announce a brief recess.

(A short recess was taken.)

The Court: Where are we now?

Mr. Treiman: Mr. Green has asked our firm, Lashly, Lashly, Miller and myself to represent him. We have had a conference with Mr. Green. He has agreed to have us enter an appearance for him and we have signed a memorandum entering our appearance and acknowledging service of the motion, Your Honor. That matter for the time being at least is disposed of.

Mr. Durham: You do not desire to file an answer now?

Mr. Treiman: I do not see how we could. We have twenty days, I understand."

Testimony for Petitioner

CHARLES J. GREEN, called by petitioner-appellant, testified on November 17, 1955 as follows:

I live at 329 S. Scoville Avenue in Oak Park which is a suburb of Chicago. I am a machinery dealer and have been in that business since 1920. I am one of the beneficiaries of a trust known as Trust No. 140, of which Mr. Benjamin Mesirow is the trustee. The trust was organized or created around April 20, 1944. J. Lee Hackett or J. Lee Hackett Company, L. Earl Hart and his partners, E. L. Fador and myself, were the original beneficiaries of the trust. Mr. Hart has since died.

Some time in the year 1944, I received a circular announcing an auction sale of a plant located at Elwood, Indiana, by the Winternitz Company on April 20, 1944, and the plant was described as being under the jurisdiction of the Federal District Court in Indianapolis and they were offering the plant for sale on that date.

[fol. 76] (At this point, petitioner's Exhibit No. 1 was marked for identification, being the circular of Winternitz Company referred to by the witness and herein photostatically reproduced.)

PETITIONER S EXHIBIT 1.

SAMUEL L. WINTERNITZ & COMPANY

Chicago Office:
First National Bank Bldg.
Chicago 3, Illinois
Phone STAte 5908

Indiana Office:
1607 Hanna Street, Fort Wayne, Ind. — Harrison 4372
Office of Trustee:
James Sansberry, Anderson, Ind. — Phone 6167

Petitioner Ex 1

In The Matter Of The
NATIONAL AIRCRAFT CORPORATION
Case No. 9401, In Bankruptcy
JAMES C. SANSBERRY, TRUSTEE

AUCTION

By Order of the United States District Court,
Southern District of Indiana, Indianapolis Division
We Will, On

THURSDAY, APRIL 20, 1944, at 9:30 A.M. (C.W.T.)

Sell at Public Auction the Following Assets of the

NATIONAL AIRCRAFT CORPORATION

In Bankruptcy
On the Premises at

450 NORTH 9th STREET

ELWOOD, INDIANA

MACHINERY — REAL ESTATE — INVENTORY

To be offered in bulk and parcels subject to approval of the referee in bankruptcy.
Sale will be conducted in conformity with regulations of all Government Agencies.

HON. CARL WILDE, REFEREE IN BANKRUPTCY
BAMBERGER AND FIBLEMAN
AND
CONRAD S. ARNKENS
} Attorneys for Trustee

INSPECTION DAILY — COMMENCING APRIL 17TH — 9:00 A.M. TO 5:00 P.M.

TERMS OF SALE ON BACK PAGE

PETITIONER'S EXHIBIT 1.

REAL ESTATE — (Land and Buildings)

Real Estate will be offered free and clear of any liens or encumbrances, subject only to property taxes for the year 1943 payable in 1944 or free and clear therefrom as shall be most advantageous, but subject to property taxes for 1944 payable in 1945 in either event. All bids subject to referees approval.

Building construction is brick exterior walls and fire walls, wood construction interior, wood and cement floors.

Building Area: First floor 80' Frontage, 575' long and 69'8" at rear of building.

Building Area: Second floor 80' Frontage, 459½' long.

Railroad track facilities alongside building serving plant.

Boiler with Iron Fireman stoker and unit heaters furnish heat. Fencing encloses most of area.

Legal Description

Commencing at a point 173.2 feet West of a point in the West side of 9th Street, which is 926 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; thence West 112 feet; thence North parallel with the West line of said 9th Street, 284 feet; thence East 86.2 feet to the Southerly side of the P.C.C. & St. L. R.R. right-of-way; thence Southeasterly on and along said right-of-way line 35 feet to a point due North of the place of beginning; thence South 259.8 feet to the place of beginning, containing approximately .76 acre.

And also, commencing at a point in the West side of 9th Street, 416 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; then West 173.2 feet; thence North parallel with the West side of said 9th Street, 769.8 feet to the Southerly side of the P.C.C. & St. L. R.R. Company right-of-way; thence Southeasterly on and along said right-of-way line 236 feet to the West line of said 9th Street; thence South on and along the West Side of said 9th Street, 608 feet to the place of beginning, containing approximately 2.74 acres.

Both parcels being part of Section Nine (9), Township Twenty-one (21) North of Range Six (6) East, and excepting therefrom the right-of-way of the P.C.C. & St. L. R.R. Company upon and along the West side of said real estate, Elwood, Madison County, Indiana.

Abstract of title may be seen at office of Trustee.

OFFICE MACHINERY AND FURNITURE

38—Oak and Steel Office Desks, single and double.
50—Office and Shop Chairs.
18—Steel Filing and Card Cabinets.
5—Record Cabinets.
4—Underwood Standard Typewriters.
1—Brunning 4 BW Blue Printer, 110 volt A.C., 15 amp., No. C041373.
1—Remington Portograph.
1—Argus Identification Camera and Stand.

Executive desks, leather upholstered chairs, addressing machine, office safe, Triners parcel post scale, electric fans, draftsmen's tables, bookcases, blue print dryer, blue print paper, hospital cabinet, metal chairs, stoves, tape machines, waste baskets, typewriter stands, office supplies, office binders, wood cabinets, card files, billing register, etc.

electric fans, draftsmen's tables, bookcases, blue print dryer, blue print paper, hospital cabinet, metal chairs, stoves, tape machines, waste baskets, typewriter stands, office supplies, office binders, wood cabinets, card files, billing register, etc.

TERMS AND CONDITIONS OF SALE

Sale is made for cash.

Purchasers to give name and address and a cash deposit of at least 25% or the whole of the purchase price, if required. Balance of purchase price to be paid in full within forty-eight hours after court approval of sale. All goods to be removed at the risk and expense of the purchaser. Additional terms of sale will be posted on the premises.

PARCEL OFFERING

Assets to be offered in the following manner, subject to approval:

Parcel 1 — Real Estate, Machinery, Inventory, Office Furniture and Good Will as an entirety (excluding trucks).
Parcel 2 — Real Estate (Land and Buildings).
Parcel 3 — Automobile Trucks.
Parcel 4 — Curtis Robin Aeroplane (subject to C.A.A. regulations).
Parcel 5 — Machinery, Inventory, Office Furniture.
Parcel 6 — Piecemeal Offering of Parcel 5.

For Further Information, Phone, Wire or Write

SAMUEL L. WINTERNITZ & COMPANY

First National Bank Bldg. ——— Phone STAte 5908 ——— CHICAGO 3, ILLINOIS

INDIANA OFFICE: 1607 HANNA STREET, FORT WAYNE, IND. — Harrison 4372

OFFICE OF TRUSTEE: JAMES SANSBERRY, ANDERSON, INDIANA — Phone 6167

I received the circular and Mr. Hart and I went to Elwood to attend the sale. As I recall, the property was put up in five different parcels, Parcel No. 2 being the real estate on which I submitted a bid of $18,750 and it was indicated that that was the top bid. I had an opportunity to examine the property before the sale actually began and there were approximately 300 people at the sale. The condition of the property was such that I question whether it could have been rented without some rehabilitation. As I recall, the floors had permanent waves in some sections and needed repair; the roof was declared to be leaking and would require a new roof and general rehabilitation.

The auctioneer announced that the bids would be submitted to the Federal Court in Indianapolis on April 25 and I was informed later that it had been continued to May 3. I believe it was sometime between the 3rd and the 8th when I was informed by the auctioneer that our bid on the real estate had been accepted. I knew on the day of the sale that my bid was the highest bid because the bidding closed and mine was the last bid.

Before Mr. Hart, my associate and I left Elwood, on the same day as the sale I gave my personal check dated April 20, 1944, to the auctioneer, payable to Samuel L. Winternitz & Company, for $5,000 as an earnest money deposit. We waited for some of the piecemeal bidding on the machinery to be completed, then we returned to Chicago. I did not purchase anything at the sale other than the real estate. I then notified Mr. Mesirow that I had made the successful bid and that the sale had to be confirmed by the District Court in Indianapolis and that I had made an earnest money deposit of $5,000.

[fol. 77] I was present most of the time throughout the entire sale. Certainly I was there until the parcel bids were all disposed of and the piecemeal bidding started. I am certain I heard no statement or announcement of any kind referring to a court injunction against proceeding with the sale nor of any proceeding in the United States District Court for the Eastern Division of Missouri nor any orders of His Honor, Judge Moore, that might affect the real estate and I heard nothing about any orders.

To the best of my knowledge and belief, the first time I heard of Christopher Engineering Company, or any dispute over the ownership or title of this property, was in March or April, 1946. At that time, Mr. Mesirow telephoned me that a man had come to his office and informed him of some court proceedings in St. Louis that were ultimately carried up to the United States Supreme Court and that a decision had been handed down by the United States Supreme Court and that Mr. Mesirow felt that we should do nothing more about the property. Until then I had never heard of the proceedings of Christopher Engineering Company and I had never heard of any injunction order issued with reference to National Aircraft Corporation, that was all strange to me.

Cross Examination of Witness

I did not have counsel in Elwood, Indiana, before consummating this sale and taking a deed and paying over my money. I think Mr. Mesirow had an attorney in Elwood check the records. I never knew that an order and decree of Judge Moore was recorded in the Recorder's office of Madison County on May 5, 1944. I told Mr. Sansberry, the Trustee, to deed the property to Mr. Mesirow. I turned the matter over to Mr. Mesirow after I came back from Elwood, and it is my impression that Mr. Mesirow sent Mr. Sansberry a check for $13,750. I made a bid on the personal property in bulk, but it was not accepted and I bought nothing and got nothing of personal prop-
[fol. 78] erty. I purchased the real estate for $18,750.

The building on the real estate which I purchased was entirely vacant. At the north end of the building there is a fire wall and against that, on the outside, is a kind of lean-to where miscellaneous items had been stored by the previous owner. The only occupancy of the plant which we enjoyed was to move in some machines we had purchased from the Radio Corporation of America in Camden, New Jersey and the Rochester Box Company in Rochester, New York. It was an area in which we moved odds and ends of equipment, and none of that equipment belonged to National Aircraft or had anything to do with National Aircraft plant. I think the machines are still

there, but we did not want to interfere with the court order, and when we learned about that order we stayed away from everything.

When I say "we" I mean the beneficiaries of the trust which consisted of three entities: the Hackett Company, the Hart interest, and I had an associate who had an interest with me. All three of the entities constituting the beneficiaries of Trust 140 were in the same type of business. They were all woodworking machinery—Hackett in Detroit, Michigan; Hart in Chicago; I was in Chicago—and we would meet at sales and we came to know each other. Hart and I attended the sale representing all the entities of the trust in accordance with the way we had been doing business in other cases.

I never paid Mr. Sansberry any sum of money for anything. I paid Mr. Winternitz for the real estate and the building because he was the representative to whom I made the bid, and from there on, after that date, then whatever developed Mr. Mesirow handled it just like he would for some other client and I stayed out of it completely.

[fol. 79] BENJAMIN S. MESIROW, petitioner-appellant, testified on November 17, 1955 as follows:

I live in Sarasota, Florida. Before that I lived in Glenview, Illinois, a suburb of Chicago. I am an attorney at law, having been a member of the Chicago Bar since June of 1912. I am the petitioner in this case in my capacity as Trustee of Trust No. 140.

My first connection with the purchase by my trust of the piece of real estate in Elwood, Indiana was late in April, 1944, when Charles J. Green, who just testified, contacted me and informed me that he had attended an auction sale at Elwood, Indiana, and had been the highest and best bidder for a piece of real estate and a plant. This was not the first instance of this kind. For many years, Hart, Hackett and Green were a triumvirate who worked

with me in conjunction with the acquisition and liquidation of plants, machinery, and in some instances real estate. I would have nothing to do with the acquisition of title to or any interest in machinery that they would acquire at various sales. As to real estate, I always took title on possibly a dozen instances as Trustee under a trust with a given number. This trust happens to be numbered 140, and I would have the beneficiaries subscribe to a trust agreement designating the powers of the trustee and interests of the beneficiaries and their identity.

When Mr. Green reported to me as was customary I contacted a Mr. Sansberry, whose name he gave me in Elwood, Indiana or Anderson, Indiana, I don't remember which, as the man to whom he had paid a deposit of $5,000 and that the price that he had agreed to pay was $18,750. I contacted Mr. Sansberry, advised him that Mr. Green had made the bid but that I was to take title, and asked him what evidence of Green's interest as successful bidder [fol. 80] he would require in order to make his deed to me. He prepared such an instrument, and while he was preparing it and sending it to me, in which the assignment and direction to Sansberry to make the deed as contained I called upon the beneficiaries of the trust for the balance of the purchase price and when these checks came in I advised Mr. Sansberry that I was ready to consummate the deal, and I had the instruments which he sent me subscribed by Mr. Green, directing him, Sansberry, to make the deed to me, and I asked him to please get his abstract down to date.

I don't remember whether he sent me the abstract directly or whether he sent it to Mr. Wayne Wimmer. Mr. Wimmer was referred to me by Sansberry at my inquiry as being a very competent lawyer who had examined this title in connection with its acquisition by previous owners, and was very familiar with that title. At any rate, the abstract was sent to me by Wayne Wimmer with an opinion of title.

Here Petitioner's Exhibit No. 2 was marked for identification, and shown to the witness and consists of the following:

[fol. 81] A letter dated May 31, 1944 addressed to Benjamin S. Mesirow, Trustee under Trust Agreement known as Trust No. 140, 110 South Dearborn Street, Chicago, Illinois, from Wayne O. Wimmer, Lawyer, Citizens Bank Building, Elwood, Indiana, enclosing an abstract of title on National Aircraft property, together with his opinion and statement for services. Said opinion of Wayne O. Wimmer addressed to Benjamin S. Mesirow states that Mr. Wimmer examined the abstract of title to the property involved herein, located in Madison County, Indiana, and that the abstract is continued to April 6, 1944. From such examination, Mr. Wimmer was of the opinion that the fee simple title to said real estate was vested in the National Aircraft Corporation subject to the following conditions and limitations * * *:

"20. In Item 11 of Abstract 2 there is a notation of the involuntary petition in bankruptcy against the National Aircraft Corporation, however the proceedings in the United States District Court of Indiana, Indianapolis Division, is not shown in said abstract but is shown in a separate abstract prepared by the L. M. Brown Abstract Company of Indianapolis.

"The report of sale and the order of sale show the above described real estate sold free and clear of all liens and encumbrances except the taxes for the year 1944, due and payable in 1945. That said sale also excepts the right of way of the P. C. C. & St. L. R. R. Company upon and along the west side of said above described real estate.

"The order approving the sale orders all valid and subsisting liens and encumbrances to be attached to the proceeds from the sale of the real estate and to be paid therefrom; and I am of the opinion that the mechanic's liens above mentioned are to be transferred to the proceeds from the sale and not to follow the above described real estate as a lien."

* * *

"26. The trustee's deed as ordered by the bankruptcy court is not available for me to determine whether or not the same complies with the order of the bankruptcy court. This can be determined at a later date.

Respectfully submitted,

/s/ Wayne O. Wimmer

WOW:vp
CC —
Jim Stansberry
Attorney at Law
Anderson, Indiana"

[fol. 82] This Exhibit No. 2 is the written opinion of Mr. Wayne Wimmer which was sent to me. I did examine the abstracts myself, of course. The abstracts that I examined were not complete.

Here Petitioner's Exhibits Nos. 3, 4 and 5 were marked for identification, and consist of the following:

Petitioner's Exhibit No. 3

Abstract of title to the following described real estate situated in Madison County in the State of Indiana, to-wit:

All that part of the Northeast quarter of the Southwest quarter, and all that part of the Northwest quarter of the Southeast quarter of Section 9, Township 21 North, Range 6 East described as follows: Commencing at a point in the west line of Ninth Street 416 feet north of the north line of North D Street, in the City of Elwood, Indiana, thence west 173.2 feet, thence north parallel with the west line of said ninth street, 510 feet, thence west 112 feet, thence north, parallel with the west line of said Ninth Street, 284 feet, thence east 86.2 feet to the southerly side of the P. C. C. & St. L. R. R. Right of Way, thence southeasterly on and along said right of way line 271 feet to the west line of said Ninth Street, thence south, on and along the west line of said Ninth Street,

608 feet to the place of beginning, being a part of Section 9, Township 21 North, Range 6 East;

prepared for the National Aircraft Corporation by Madison County Abstract and Title Corporation, 207-208 Anderson Bank Building, Anderson, Indiana, known as Abstract No. 42455, bearing Certificate dated January 20, 1943 at 8:00 A. M., signed by Andrew C. Marsh, President, covering sheets numbers 1 to 136, both inclusive; said abstract of title showing a plat of the above described real estate commencing with a notation of the original patent deed from the United States of America to James Gray of Madison County, Indiana, his heirs and assigns forever, dated November 10, 1841, recorded in Book 189, page 324, and ending with an abstract of judgment and decree quieting title entered on January 15, 1943 by the Madison Circuit Court recorded in order book No. 150 at page 283 in cause No. 20083, styled "Elwood Industrial Bureau, Inc., et al. v. Cassius C. Luce, et al." decreeing that National Aircraft Corporation is the owner in fee simple of the following described real estate, to-wit:

Commencing at a point in the west line of Ninth Street 416 feet north of the north line of North D Street, in the City of Elwood, Indiana, thence west 173.2 feet, thence north parallel with the West line of said Ninth Street, 510 feet, thence west 112 feet, thence north, parallel with the west line of said Ninth Street, 284 feet, thence east 86.2 feet to the southerly side of the P. C. C. & St. L. R. R. right of way, thence south-easterly on and along said right of way 271 feet to the west line of said Ninth Street, thence south, on and along the west line of said Ninth Street, 608 feet to the place of beginning, being a part of Section 9, Township 21, North, Range 6 East.

Petitioner's Exhibit No. 4

[fol. 83] Abstract of title to the following described real estate located in Madison County, State of Indiana:

All that part of the North East quarter of the South West quarter, and all that part of the North West quarter of the South East quarter of Section 9, Township 21 North, Range 6 East, described as follows: Commencing at a point in the West line of Ninth Street 416 feet North of the North line of North D Street in the City of Elwood, running thence West 173.2 feet, thence North parallel with the West line of said Ninth Street, 510 feet, thence West 112 feet, thence North parallel with the West line of said Ninth Street 284 feet, thence East 86.2 feet to the Southerly side of the P. C. C. & St. L. R. R. Right of Way, thence South Easterly on and along said Right of Way line 271 feet to the West line of said Ninth Street, thence South on and along the West line of said Ninth Street, 608 feet to the place of beginning.

Said abstract, known as No. 634, was prepared by Rowland Title Company, 31 West 10th Street, Anderson, Indiana, for National Aircraft Corporation for the period from January 20, 1943 at 8:00 A. M. to April 6, 1944, bearing the certificate of Rowland Title Company by Bess Goodykoontz, President; said abstract of title showing, as Item No. 11, the following:

"11.

Cause #9401
Bankruptcy
January 24, 1944

UNITED STATES DISTRICT COURT
(INDIANAPOLIS DIVISION)
Involuntary Petition
In Bankruptcy of
National Aircraft Corporation

——"

Petitioner's Exhibit No. 5

Abstract of title dated May 12, 1944 prepared by L. M. Brown Abstract Company, 150½ East Market Street, Indianapolis, Indiana, known as Special Information No. 190468 prepared for Rowland Title Company, said Special Information abstract showing the following:

[fol. 84] "The Following Abstracted from proceedings in The United States Clerk's Office at Indianapolis, Indiana. In the District Court of the United States, for the Southern District of Indiana, Indianapolis Division.

In the Matter of National Aircraft Corporation, Alleged Bankrupt.

#9401 Petition filed January 21, 1944.

The petition of Lilly Varnish Company, E. C. Atkins & Company, and Capital Paper Company, all of Indianapolis, Marion County, Indiana, respectfully represents:

1. That National Aircraft Corporation is a corporation organized under the laws of the State of Indiana, and has had its principal place of business at Elwood, within the above judicial District for a longer portion of the six months immediately preceding the filing of the petition than in any other judicial District.

2. Said National Aircraft Corporation owes debts in excess of $1,000.00 and is a business or commercial corporation engaged in the manufacture of airplane parts, and is not a municipal railroad, insuring or banking corporation.

3. Your Petitioners are creditors of said Corporation, having provable claims against it, amounting to more than $500.00 and that they hold no securities.

4. That said alleged bankrupt committed an act of bankruptcy in that, while unable to pay its debts as they matured, it permitted and suffered the appointment of a receiver to take charge of its property, Earl C. Reasoner having been appointed as such Receiver by the Madison Circuit Court on or about January 19, 1944.

Wherefore petitioners pray that service on the petition with a subpoena may be made upon said National Aircraft Corporation, as provided in the Acts of Congress, relating to bankruptcy, and that it may be adjudged by the Court to be a bankrupt within the purview of said acts.

* * *

January 21, 1944. Subpoena issued, Subpoena returned showing that same was served upon the within named National Aircraft Corporation, by delivering a true copy of Subpoena and copy of Creditors Petition to W. A. O'Reilly, Assistant General Manager of said corporation at Elwood, Indiana, on January 21, 1944, by order of plaintiff's attorney, Julius J. Wichser, United States Marshal, by James M. Campbell, Deputy.

[fol. 85] January 24, 1944. Petition for appointment of Receiver ordered referred to Carl Wilde, Referee.

February 7, 1944. Adjudication by Court, National Aircraft Corporation adjudged bankrupt, and proceeding referred to Carl Wilde as Referee in Bankruptcy.

February 8, 1944. James C. Sansberry, of Anderson, Indiana, appointed Receiver and files bond in the sum of $5,000.00 with Surety, Bond approved by Referee.

March 13, 1944. James C. Sansberry appointed Trustee and files bond in the sum of $25,000.00 with surety, Bond approved by Referee.

* * *

March 21, 1944. James C. Sansberry, Trustee, files Petition for Sale of Real and Personal Property filed, showing that the assets of said bankrupt corporation in the hands of said Trustee, are of such a nature that it is highly desirable that the same be sold at the earliest possible convenient time, as same are depreciating in value, and such facilities are needed in defense industries, and that for both reasons, said Trustee shows to the Court that it is highly advisable the same be sold without further delay.

* * *

April 6, 1944. The Referee having heard the Trustee herein and his counsel, and the attorneys representing the United States of America, and being advised in the premises, finds that it is to the best interest of the creditors of the bankrupt that the real property hereinafter described, be sold, at public sale, in accordance with the prayer of the Trustee's petition, and that said petition be granted excepting as to the Variation as to the Sale

of real estate subject to taxes for the year 1943, and accordingly, it is now ordered, adjudged and decreed, That James C. Sansberry, as Trustee in Bankruptcy of National Aircraft Corporation Bankrupt, be and he is, hereby directed and empowered to sell and dispose of the real property hereinafter described, with the exceptions hereinafter made, at public sale on the premises heretofore occupied by said bankrupt at Number 450 North Ninth Street, in the City of Elwood, Indiana, on the 20th day of April 1944 at 9:30 o'clock A. M. and if necessary to continue said sale from day to day until said real estate is sold, the real estate to be sold subject to property taxes thereon for the year 1943, payable in 1944, or free and clear therefrom, in accordance with whichever method shall be more advantageous to the estate, but the same to be sold subject to the taxes for the year 1944, payable in 1945, and said real estate also to be sold free and clear from the lien of certain mechanics and materialmens liens which, if valid, should be transferred to the fund derived from the sale.

That said real estate, so ordered sold, is the following described real estate, located and situate in Madison County, Indiana, to wit:

[fol. 86] Commencing at a point 173.2 feet west of a point in the West side of 9th Street, which is 926 feet North of the North line of North "D" Street, all in the City of Elwood, Indiana, thence west 112 feet, thence North parallel with the west line of 9th Street 284 feet, thence east 86.2 feet to the southerly side of the P. C. C. & St. L. R. R. Right of Way, thence southeasterly on and along said right of way line 35 feet to a point due North of the place of beginning, thence South 259.8 feet to the place of beginning.

Also, Commencing at a point in the west side of 9th Street 416 feet North of the North line of North "D" Street, all in the City of Elwood Indiana, thence West 173.2 feet, thence North parallel with the west side of said 9th Street 769.8 feet to the southerly side of the P. C. C. & St. L. R. R. Company right of way, thence

southeasterly on and along said right of way line 236 feet to the west line of said 9th Street, thence South on and along the west line of said 9th Street, 608 feet to the place of beginning.

Both Parcels being part of Section 9, Township 21 North of Range 6 East, and excepting therefrom the right of way of the P. C. C. & St. L. R. R. Company upon and along the west side of said real estate.

Said real property shall be sold for cash, to the highest bidder, that notice of said sale be given by mail by the Referee to all known creditors, and all other known parties in interest, not less than 10 days before the time fixed for said public sale, and that the Trustee give notice of such sale by publishing the same at least one itme in a newspaper of general circulation in the City of Indianapolis, Indiana, not less than 10 days prior to the sale, and that he give such other and further notice by publication, or otherwise, and make such other advertisement thereof, as he shall deem necessary and desirable.

* * *

April 21, 1944, Trustees Report of Sale filed, showing that notice of sale was given by publishing the form of Notice hereunto annexed, (form of notice not herein abstracted) which was circulated to some thirty-seven hundred fifty prospective buyers, and by publishing in, Indianapolis News, Indianapolis Star, Chicago Tribune, Chicago Daily News, and other newspapers of general circulation, published in the Cities of Anderson, Kokomo, Marion, Fort Wayne and Elwood, Indiana.

That on Thursday, April 20, 1944 your petitioner offered for sale, subject to the approval of the Court the following described real estate:

* * *

Wherefore, Trustee prays that his acts in connection with said sale be approved by the Court.

[fol. 87] May 2, 1944. Referee having examined above Trustee's Report finds that said sale should be approved and confirmed, and accordingly, it is now

Ordered that said report of sale of the Trustee and the Acts and doings of said Trustee by him reported be, and they are, approved, that the sale of the real estate described in said report to Charles Green of Chicago, Illinois, for the sum of $18,750.00 be, and it is approved and confirmed.

Also, Sale of various other items approved, (not herein abstracted.)

The sales of all of said assets hereinabove confirmed to be free and clear of all liens and encumbrances except the property taxes upon said real estate for the year 1944 payable in 1945, to which said real estate is sold subject, all valid and subsisting liens and encumbrances of which said assets are sold free and clear to follow and attach to the proceeds derived from the sale thereof and to be paid therefrom.

It is further ordered, that the Trustee be, and is, upon receipt of the purchase price of the assets sold and the sale whereof is herein confirmed, authorized and directed to deliver said property to the respective purchasers thereof and to execute such instruments as may be necessary to evidence the transfer of title thereto."

Said Petitioner's Exhibit No. 5 shows on page 5 thereof the following notation in pencil: "11/30/46 Abst omits trustee's report of Injunction order of Mo. Ct. See p. 41 of Rec. See p. 10 of Rec. GOD"

|fol. 88| These three abstracts which have just been marked are the abstracts which I examined in connection with arriving at an opinion as to the title of the real estate that was to be vested in my trust. I examined them and found all proceedings had not been abstracted, and I insisted upon a subsequent edition to bring it down to show all proceedings in the Bankruptcy Court, and finally this one of May 12 was the last one. I examined all three of them. This abstract of May 12 is the one I had not received prior to that time on previous examinations and on examination by Wayne Wimmer. I was furnished with no other abstracts before I closed the sale of the property by Mr. Sansberry to my trust.

[fol. 89] "Q. I call your attention, Mr. Mesirow, to a pencil notation on page 5 of the abstract dated May 12, 1944 which has been identified as Petitioner's Exhibit 5, and ask you what that pencil notation states and what the initials thereon are?

A. Well, I can read it.

Q. Would you mind?

A. Abstract omits trusteee's report of injunction order of Missouri court. See page 41 of record and 10 of the record. See GOD.

Q. G. O. D. are the initials?

A. Yes, that is George O. Durham.

* * *

Q. (By Mr. Treiman) Can you account for his initials being on there, Mr. Mesirow, do you know how that came about?

A. I can account for them in this way.

Q. Yes, how did that notation get on that abstract?

Mr. Durham: Oh, I had this abstract in my possession.

A. I was about to say, I turned the abstract over to Mr. Durham going back to 1956. I received a letter from him, I received a letter—

Q. (By Mr. Treiman) You don't mean 1956, do you, 1946 you mean.

A. 1946, yes. As a result—well, I was a little ahead of the thing because that would account for the notation, because I brought them over and showed them to George Durham."

[fol. 90] After I received the opinion from Mr. Wayne Wimmer and examined the abstracts, I asked Mr. Sansberry to send me his deed, having ascertained that the sale had been confirmed and an order had been entered directing him to collect the bid and to convey the property.

Some time in June he wrote me that he had made out a deed in accordance with Mr. Green's instructions and was forwarding it to the office of Samuel Winternitz, the auctioneer. I then gave Mr. Winternitz my check for $13,750, he delivered the deed to me, and I forwarded it to the Re-

corder of Deeds of Madison County, in Anderson, Indiana, with instructions to record it. This occurred some time around the middle of June, 1944, and the deed was recorded a day or two after.

We followed the usual procedure with reference to this trust property. I sent a man by the name of Sigmund Gross, now deceased, one of our field men, to Elwood, Indiana, to take charge of the plant, see that the locks were changed and the heating plant protected and all the personal property was safeguarded. I did not personally go to Elwood and examine the property until September, 1955. Mr. Gross made reports to Mr. Green on the condition of the property more than to me because I only take care of the collections of rents or any complaints or any [fol. 91] repairs and things of that sort. Immediately after the acquisition of this property we made temporary repairs and tried to rent the property. We used a part of it for storage because my beneficiaries had shipped in some machines from Newark, New Jersey or somewhere.

Through Mr. Green we hired a real estate agent. We succeeded in getting a tenant for the property the following March. At that time I was informed by Mr. Green that the real estate broker had a tenant for this plant at Elwood, the Argonaut Division of General Motors, for a lease at $1250 per month for a period to commence May 1, 1945 and to terminate on December 1, 1946, with an option to extend it for six months at the same rental. In connection with this lease we were obligated to make repairs to the property to qualify it for their occupancy, and also agreed to give them a credit of $35.00 a month for the use of the little out-building which adjoined the main building, so that the net rental to us would be $1215.00.

Having no money in the trust, I arranged with the tenant that they should repair the roof, for which I had estimates of a cost of $3450, and that they should deduct this

cost from the rent. This they did, and the first check I got was for the months of April, May, June and July in the total amount of $1,410. A statement which I prepared for Mr. Durham, dated May 17, 1946, shows that the trust paid about $1600 for insurance premiums up to that date; $1200 real estate commission; $32.50 per week for a watchman for the period June 23, 1944 to April 10, 1945, amounting to $1,348.64 plus my contribution as employer for Social Security taxes; miscellaneous expenses for water, telephone and electricity.

(Mr. Mesirow continued his testimony on November 18, 1955 as follows:)

[fol. 92] After the first rent check, I continued to receive monthly checks for the full amount of $1215 from General Motors, but this did not continue until the termination date, December 1, 1946, because I received a letter from the Argonaut Division of General Motors advising me they had received a communication from Mr. Durham, the attorney for the Court's Trustee, advising them of the fact that I have no title and warning them against payment of future rent.

Whereupon Petitioner's Exhibit No. 6 was marked for identification and shown to the witness, who stated that instead of receiving a check on May 1, he received this letter. It reads as follows:

[fol. 93] ARGONAUT REALTY DIVISION
General Motors Corporation
Detroit 2, Michigan

May 1, 1946

Benjamin S. Mesirow, Trustee
under Trust Agreement No. 140
110 South Dearborn Street
Chicago, Illinois

Re: Lease Agreement dated March 19, 1945 between Benjamin S. Mesirow, Trustee under Trust Agreement No. 140, and General Motors Corporation (Allison Division) covering premises known as 450 North Ninth Street, Elwood, Indiana

Dear Sir

We are in receipt of a letter dated March 28, 1946 from George O. Durham, Attorney on behalf of Jerome F. Duggan, Trustee in Reorganization, relative to the subject lease covering the premises formerly occupied by National Aircraft Company at Elwood, Indiana.

Mr. Durham advises that the property in question was sold in the course of bankruptcy proceedings in the Indiana Court, by a trustee in bankruptcy of the National Aircraft Company on April 20, 1944; that prior to said sale the National Aircraft Company was admitted to reorganization in the United States District Court in St. Louis and the sale by the Indiana Trustee was enjoined. The Indiana Court refused to recognize the jurisdiction of the St. Louis Court and confirmed the sale of the real estate from which order Mr. Durham, on behalf of the Trustee appointed by the St. Louis District Court, prosecuted an Appeal to the Seventh Circuit Court of Appeals in Chicago. The latter court, on June 22, 1945, affirmed the order of the lower court confirming the sale (see Vol. 149 Federal Reporter 2nd, page 548).

Thereafter, on behalf of the St. Louis Trustee, Mr. Durham and associated counsel secured a review of the decision of the Seventh Circuit in the United States Supreme Court, as a result of which, on March 4, 1946, the Supreme Court, reversed the ruling of the Courts below, thereby in effect vacating the aforementioned sale and staying further proceedings in the Indiana Bankruptcy Court (See Duggan, etc. v. Sansberry, etc., No. 418; National Aircraft Company v. Sansberry, etc. No. 419; U. S. Supreme Court October Term, 1945).

[fol. 94] As a result of the decision of the Supreme Court the sale by the Indiana Trustee in bankruptcy, unless ratified by the St. Louis Trustee in Reorganization and confirmed by the St. Louis District Court, may be considered void. It is presumed that your claim to title of the property as Trustee under Trust Agreement No. 140, stems from the sale by the Indiana Trustee in bankruptcy. For this reason it would appear that the true owner may assert a claim against the occupants of the premises or their landlords for the value of the use of the property since the defective sale on April 20, 1944.

Because we have been put on notice by the attorney for the St. Louis Trustee in Reorganization that the St. Louis Trustee claims title to the property and the right of possession as well as the value of the use of the property by the occupants thereof or their landlords since April 20, 1944, we believe it advisable to withhold the payment of rent under the subject lease agreement until the question of title and right of possession is cleared up by agreement between the parties or appropriate order of the St. Louis District Court.

We have no idea how this matter will ultimately be settled, but we fell confident that the matter will be worked out properly under the jurisdiction of the St. Louis District Court.

If any questions should arise as to our liability to the true owner of the premises for the value of the use thereof during our occupancy, we will, of course, look to you for reimbursement under the provisions of the subject lease agreement. It is hoped that this question will be settled

at an early date and you may be assured of our cooperation with all interested parties.

Very truly yours

Argonaut Realty Division
J. T. McGarrie
Assistant Treasurer

JTM: bk

[fol. 95] After I received the letter from the Argonaut Division of General Motors, I received a letter from Mr. Durham.

Here Petitioner's Exhibit No. 7 was marked for identification, and it is as follows:

Law Offices
GEORGE O. DURHAM
315 N. Seventh Street
St. Louis, Mo.

David Berenstein
James W. Durham

Garfield 1314

June
Third,
1946

Mr. Benjamin S. Mesirow, Trustee,
110 South Dearborn Street,
Chicago, Illinois.

In re National Aircraft Company premises,
450 North 9th Street, Elwood, Indiana.

Dear sir:

I am advised that you, as trustee for various parties, are, through tenants, in possession of the premises known as 450 N. 9th Street, Elwood, Indiana, and have been in such possession since some time in May, 1944, under a pur-

ported sale by James C. Sansberry, Trustee in Bankruptcy. I am also advised that you or the beneficiaries in your trust agreement have been collecting revenue on the property amounting to $15,000.00 per year from the Allison Division of the General Motors Corporation.

As you are no doubt informed, the United States Supreme Court, in the case of Jerome F. Duggan, Trustee in Reorganization for National Aircraft Company, and National Aircraft Company, Petitioners, vs. James C. Sansberry, Trustee, on jurisdictional grounds sustained the petitioners' appeal from the order approving the sale under which you claim and reversed the order confirming the sale. (Order of Supreme Court in Causes Nos. 418 and 419 March 6, 1946)

As we construe the opinion of the Supreme Court, the title to the premises in question vested in Jerome F. Duggan, Trustee in Reorganization of the National Aircraft Company, under appointment of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, on April 19, 1944, at which time the power of your vendor, James C. Sansberry, Trustee, over the assets terminated. We are accordingly of the opinion that your occupancy and the occupancy of Mr. Sansberry after April 19, 1944, was wrongful and constituted an intermeddling with the assets of the Trustee Duggan.

A short time ago on behalf of Mr. Duggan I caused negotiations to be undertaken with the view of making temporary disposition of the property with the view of securing proper revenue during the proceedings of the reorganization of the corporation and was advised that a Mr. Green, whom I understand to be one of your beneficiaries, had asserted title to the property in hostility to the title of Mr. Duggan, from which I assume you propose to assert title in hostility to the judgment order of the United States District Court in Missouri. At any rate, the asserted title is calculated to interfere with the management of the property by Duggan, Trustee.

[fol. 96] Will you kindly advise me if my assumption is correct? Will you also advise me if you desire to disclaim title to the property peaceably and negotiate a settlement for the value of the use and occupancy during the period

the property has been occupied by you as trustee or one or more of your beneficiaries?

I am writing this letter on behalf of Jerome F. Duggan, Trustee in Reorganization, and as his attorney. A prompt reply is imperative and will be appreciated.

Very truly yours,

Geo. O. Durham

GOD-O.

[fol. 97] Prior to the date of this letter from Mr. Durham of June 3, 1946, I did not receive any word from either Mr. Durham or Mr. Duggan with respect to the real estate which my trust had purchased in 1944.

Preceding these communications with Mr. Durham I had a conference with one Mr. Feibleman on March 30, 1946. Mr. Feibleman, an attorney from Indianapolis, Indiana, came to my office and started to talk to me about a Supreme Court decision in Duggan v. Sansberry. I recognized it as being Sansberry from whom I had bought the property a couple of years previous, and he told me that the Supreme Court had held in effect that the Court which approved the sale by Sansberry to me had no jurisdiction so to do. I had never met Mr. Feibleman before, I did not know of his existence, I never heard of him, and [fol. 98] I had never had any contact with him, and I had not known and had no knowledge of any litigation involving Mr. Sansberry and Mr. Duggan. I knew nothing about any of the litigation which Mr. Feibleman told me had been carried on all the time I was collecting rent and operating this building. I sent for a copy of the opinion, and I called my beneficiaries together and gave them the gladsome tidings, to the shock of all of us. Then I followed up my correspondence with Mr. Durham and made an appointment to see him in St. Louis. I took my abstracts with me, and my accounting. I took all the information, my entire file, all the correspondence, told Mr. Durham my whole story, left the abstracts with him. My conference with Mr. Durham lasted almost en entire day.

I went back to Chicago and I did not receive any more rent.

Early in April, 1951, I took sick and I turned this matter over in my absence to Mr. Simon C. Alster, who was an office associate of mine. I went to the hospital and then to Florida, and during my absence he carried on and in the interim I think he received back the abstracts which I had given Mr. Durham in my conference in St. Louis. I found the abstracts in my file together with a Supplementary Abstract of Title.

Whereupon Petitioner's Exhibit No. 8 was marked for identification and shown to the witness, who stated that it was the Supplementary Abstract referred to in his testimony. Petitioner's Exhibit No. 8 consists of the following:

[fol. 99] Abstract of title known as No. 1150 prepared by Rowland Title Company by Bess Goodykoontz, President, for Benjamin S. Mesirow, Trustee, dated June 9, 1951, for the period May 12, 1944 at 8:00 A. M. to June 9, 1951; said abstract of title showing as Item 2 the following:

"2.

TRUSTEE'S DEED

This Indenture Witnesseth: That I, James C. Sansberry, of Madison County, State of Indiana, Trustee in Bankruptcy of the estate of National Aircraft Corp., being cause #9401 in Bankruptcy on the docket of the United States District Court, for the Southern District of Indiana, Indianapolis Division, do hereby, as such Trustee, convey and transfer to Benjamin S. Mesirow, Trustee under Trust Agreement known as Trust #140 of Cook County, State of

Illinois, the following real estate belonging to said bankrupt, located in Madison County, State of Indiana, described as follows, to-wit:

Commencing at a point 173.2 feet West of a point in the West side of 9th Street, which is 926 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; thence West 112 feet; thence North parallel with the West line of said 9th Street, 284 feet; thence East 86.2 feet to the Southerly side of the P. C. C. & St. L. R. R. right-of-way; thence Southeasterly on and along said right-of-way line 35 feet to a point due North of the place of beginning; thence South 259.8 feet to the place of beginning.

And also, commencing at a point in the west side of 9th Street, 416 feet North of the North line of North "D" Street, all in the city of Elwood, Indiana; thence West 173.2 feet; thence North parallel with the West side of said 9th Street, 769.8 feet to the Southerly side of the P. C. C. & St. L. R. R. Company right-of-way; thence Southeasterly on and along said right-of-way line 236 feet to the West line of said 9th Street; thence South on and along the West side of said 9th Street, 608 feet to the place of beginning.

Both parcels being part of Section 9, Township 21 North of Range 6 East, and excepting therefrom the right-of-way of the P. C. C. & St. L. R. R. Company upon and along the West side of said real estate.

Subject to the taxes for the year 1944, payable in May and November, 1945, but free and clear from all other encumbrances and liens.

This Deed is executed in consideration of the payment by the said grantee to the said Trustee of the sum of $18-750.00, receipt whereof is hereby acknowledged.

The conveyance of said real estate is pursuant to an order made and entered by the Honorable Carl Wilde, one of

the Referees in Bankruptcy in the District Court of the United States for the Southern District of Indiana, in the said matter of National Aircraft Corp., #9401 in Bankruptcy, pending before said Referee, which order was entered in said cause on the 6th day of April, 1944, for the sale of said real estate, and the further order of said Referee entered on June 16, 1944, ordering this conveyance by said Trustee to the said grantee.

In Witness Whereof, the said James C. Sansberry, Trustee as aforesaid, has hereunto set his hand and seal this 15 day of June 1944.

James C. Sansberry (Seal)
Trustee of the Estate of
National Aircraft Corp.,
Bankrupt.

[fol. 100] Approved:
June 16, 1944
Carl Wilde
Referee in Bankruptcy

Acknowledged June 15, 1944, by James C. Sansberry, Trustee of the estate of National Aircraft Corp., Bankrupt, before Marie McClintock, Notary Public, Madison County, Indiana.

Recorded June 29, 1944.

Deed Record 285, page 438.

(Rev. stamps cancelled $20.90)"

[fol. 101] Late in the Summer of 1951 on my return to my office with Mr. Alster, he showed me a copy of Judge Moore's order appointing Mr. Duggan Trustee of National Aircraft and enjoining further proceedings with respect to the assets of National Aircraft.

Whereupon Petitioner's Exhibit No. 9 was marked for identification and shown to the witness. Petitioner's Exhibit No. 9 consists of the following:

[fol. 102] TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

In the Matter of CHRISTOPHER ENGINEERING COMPANY, a corporation, Debtor.	In proceedings for the reorganization of a corporation. No. 10947

(Order Approving Petition of Subsidiary Corporation, etc.)

At St. Louis, in said division of said district, this 19th day of April, 1944.

This cause, coming on to be heard on the petition of National Aircraft Corporation, a corporation praying that proceedings be had under Chapter X of the Bankruptcy Act in connection with the said National Aircraft Corporation, a wholly owned subsidiary of the Christopher Engineering Company, the principal debtor, and after hearing attorneys for said subsidiary corporation in favor of said petition,

Now, upon said petition, and all the proceedings had before me at the said hearing, and due deliberation having been had thereon; the

Court Does Find

1. That the National Aircraft Corporation is a wholly owned subsidiary of the Christopher Engineering Company, a corporation, the principal debtor herein, and is en-

titled to file its petition in these proceedings of its parent company.

2. That the indebtedness of National Aircraft Corporation, liquidated as to amount and not contingent as to liability, is less than $250,000.00.

3. That Jerome F. Duggan, Esq., is qualified to be trustee herein.

4. That said petition of National Aircraft Corporation complies with the requirements of Chapter X of the Bankruptcy Act.

[fol. 103] 5. That said petition of National Aircraft Corporation has been filed in good faith; and it is

Ordered, Adjudged and Decreed

6. That said petition be, and it hereby is, approved.

7. That Jerome F. Duggan, Esq., be, and he hereby is, appointed trustee of said National Aircraft Corporation, and said trustee upon filing a bond, as hereinafter provided, shall be vested with all the title and, to the extent consistent with said Chapter X, shall be vested with the same rights, shall be subject to the same duties, and shall exercise the same powers as a trustee appointed pursuant to Section 44, of said Act, and shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of said subsidiary debtor.

8. That the bond of Jerome F. Duggan as Trustee of the estate of the debtor heretofore filed and approved herein be extended to cover the liabilities of said Trustee as Trustee of National Aircraft Corporation to the same extent as said bond covers his liabilities as Trustee of the Debtor herein; the extension of such bond, approved by the Court, shall be promptly filed herein.

9. That said trustee be, and he hereby is, authorized to operate the business and manage the property of said subsidiary debtor until such time as this court shall otherwise

prescribe, and during such operation and management, the said trustee shall file with this court, in duplicate, not later than the 15th day of each month, a report and summary of the operations of the business and management of the property of the within estate during the preceding month, which report shall include a classified statement of receipts and disbursements, indebtedness incurred, credit extended, contractual and other obligations assumed, and a profit and loss statement.

* * *

14. That until final decree or the further order of this court, all creditors and stockholders, and all sheriffs, marshals and other officers, and their respective attorneys, servants, agents and employees, and all other persons, firms and corporations be, and they hereby are, jointly and severally, enjoined and stayed from commencing or continuing any action at law or suit or proceeding in equity against said subsidiary debtor or said trustee in any court, or from executing or issuing or causing the execution or issuance out of any court of any writ, process, summons, attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or [fol. 104] interfering with or enforcing a lien upon any property owned by or in the possession of the said subsidiary debtor or said trustee, and from doing any act or thing whatsoever to interfere with the possession or management by said subsidiary debtor or said trustee of the property and assets of the within estate, or in any way interfere with said trustee in the discharge of his duties herein, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this court over said subsidiary debtor and said trustee and the respective properties; and all persons, firms or corporation owning lands or buildings occupied by said subsidiary debtor or said trustee or wherein is contained any property of the within estate be, and they hereby are, jointly and severally, stayed, pending the further order of this court, from removing or interfering with any such property.

15. That James C. Sansberry, heretofore appointed trustee in the bankruptcy proceeding pending the United

States District Court for the Southern District of Indiana, Indianapolis Division, which proceedings are now pending before the Honorable Carl Wilde, Referee in Bankruptcy for said Division and District, be, and is hereby, restrained and enjoined from doing any act or thing whatsoever affecting the property and assets of the National Aircraft Corporation, and he is further enjoined and restrained from doing any act or thing whatsoever to interfere with the right of the trustee herein to the immediate possession or management of the property and assets of the National Aircraft Corporation, and he is further restrained and enjoined from interfering with the trustee herein in the discharge of his duties in this proceeding, and he is further ordered and directed to forthwith turn over and deliver unto the trustee herein all of the property and assets of the National Aircraft Corporation in his possession or under his control.

16. That Samuel L. Winternitz & Company, Inc., its agents, officers, employees and servants, be, and they are hereby jointly and severally restrained and enjoined from selling or attempting to sell the assets or any part thereof belonging to the National Aircraft Corporation; and they are further restrained and enjoined from doing any act or thing whatsoever affecting the property and assets of the National Aircraft Corporation.

17. That this court reserves full right and jurisdiction to make at any time and from time to time such orders for the purpose of vacating, amplifying, extending, limiting or otherwise modifying this order, as the court shall deem proper.

Geo. H. Moore
United States District Judge.

[fol. 105] Endorsed: "Filed Apr. 19, 1944 Jas. J. O'Connor Clerk"

United States of America,
Eastern District of Missouri, ss:

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Eastern, do hereby

certify that the annexed and foregoing is a true and full copy of the original Order Approving Petition of Subsidiary Corporation, Etc., filed April 19, 1944 in the Matter of Christopher Engineering Company, a corporation, Debtor, In Proceedings for the Reorganization of a Corporation, No. 10947, pending in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri; and now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri this 3rd day of May, A. D., 1944.

(Seal)

James J. O'Connor
Clerk

By John A. Oldendorph
Deputy Clerk

Recorded May 5, 1944.
Miscellaneous Record 58, Page 595.

[fol. 106] Mr. Alster had written to the Recorder of Deeds and obtained this copy of the instrument filed for record on May 5, 1944.

After my return to Chicago, I carried on where Alster left off to try to get this matter to a determination before this court. I corresponded with Mr. Durham on numerous occasions to see if we could set a time when I could present a petition submitting to the Court the position I was in and asking for relief. In the course of the conferences with Mr. Alster, my attorney, and Mr. Durham, they entered into a stipulation which they presented to me for signature providing for the payment of this reserve rent in General Motor's treasury into this Court or to the Trustee of this Court. I suggested several changes and several safeguards in respect to it. Finally there was one agreeable to everybody. I signed it and gave it to Mr. Alster. I am informed that that is the stipulation that was subsequently approved by order of this Court, which is in the record of these proceedings.

I saw Mr. Durham's letter addressed to Mr. Alster, dated March 31, 1950.

(Whereupon Petitioner's Exhibit No. 10 was marked for identification and read to the Court, and is the letter dated March 31, 1950 from Mr. Durham to Mr. Alster attached to Petition as Exhibit "C".)

I saw a letter dated August 2, 1950 from Mr. Durham to Mr. Alster.

Whereupon Petitioner's Exhibit No. 11 was marked for identification, and is the letter referred to by the witness. Said letter was then read to the Court, and is as follows:

[fol. 107]

LAW OFFICES
GEORGE O. DURHAM
315 N. Seventh Street
St. Louis 1, Mo.

James W. Durham GArfield 1314

August
Second,
1950.

Mr. Simon H. Alster,
Suite 1209, 100 West Monroe Street,
Chicago 3, Illinois.

In re National Aircraft Corporation, Elwood, Indiana.

Dear Mr. Alster:

I presented the stipulation to Judge Moore just as he was about to leave on his vacation and procured from him an order, a copy of which I enclose. I have also mailed a copy of the order to the General Motors Corporation. I am also enclosing a signed copy of our stipulation for your files.

I drew the order hastily but I believe it corresponds to our understanding. In any event I have assured you that

by consenting to the payment of the money to Duggan, Trustee, none of your rights are impaired or modified and that what, if any, claim you might otherwise have against the General Motors Corporation constitutes a prior lien against the money in the hands of the trustee, which can only be disbursed on special order of the Court. Since your interest appears in the Court record no order can be entered except on notice to you and an opportunity for you to be heard.

I would be very happy to discuss the whole matter with you informally at any time you could come down here. Since Judge Moore will not return until about the middle of September I think it would be better for us to have a conference about the time of his return.

There is no hurry about filing your claim, since no time is fixed within which you shall be required to file it. The order gives you general authority to file the claim at a convenient time or requires you to file it upon twenty days' notice by us.

I am still going around and around with the War Department, but the prospect looks good and I expect ultimately to be able to pay the debts of the corporation in full.

With best personal regards, I am

Yours truly,

Geo. O. Durham

GOD-O.
Enclosures.

[fol. 108] Following this exchange of letters, the execution of the stipulation and the entry of the order of Judge Moore, I did nothing further about the real estate until I learned that the property was in very bad shape. I had that through one of the salesmen who came through Elwood and reported it.

Mr. Durham: I object to that on two grounds. It is hearsay and another thing it is irrelevant to any issue in

this case. If it is his property it is OK; if it is our property it is none of his business what we allowed to happen to it.

The Court: Objection sustained.

Mr. Mesirow: I did not personally see the property until September of this year, several months ago.

Mr. Durham: I object to inquiry in that connection, he has not shown any title to the property yet, and I do not think he is going to show any title, as I pointed out before.

The Court: Sustained.

[fol. 109] "Mr. Treiman: At this point Petitioner makes the following offer of proof, that the real estate at Elwood, Indiana purchased by Trust No. 140 in 1944 is in a dilapidated and seriously neglected condition, that vandals over the past few years have broken into the place, and that windows have been broken and allowed to remain unrepaired; that filth has been allowed to accumulate throughout the premises; that weeds and bushes up to six feet or more have been allowed to grow in and around the premises rendering certain portions of the premises practically impossible or inaccessible. We also offer to prove that this condition of the property has been the result of neglect on the part of Mr. Duggan, trustee. We also offer at this point to prove that as a result of the failure of the trustee properly to take care of the property during the past few years that taxes on the property have been allowed to go unpaid; that by December of 1954 the unpaid taxes with interest and penalties had accumulated to a sum in excess of $5,000; that in December of 1954 the County of Madison bought in the property for the taxes, the unpaid taxes. In support of this testimony we are prepared to offer in evidence photographs taken last year and taken very recently this year showing the condition of the property. We are prepared also to offer in evidence the unpaid tax bills and the most recent bill of the County of Madison, Indiana showing the amount of the presently unpaid taxes. We are also prepared to offer in evidence proof that the right of redemption under the Indiana law under which this property might be repurchased from the

County of Madison for the taxes will expire on December 1, 1955."

* * *

"Mr. Durham: I object to the offer of proof because it does not dispose, it is not relevant particularly in view of the statement of Mr. Treiman that he had offered all [fol. 110] his evidence that he proposed to offer on the ownership of this property. In that connection I may call, just amplify this a little bit. Mr. Mesirow is claiming by a judicial sale which raises two questions, did he buy at a purported judicial sale, and if he did, did that court have jurisdiction to approve the sale. He has not offered any evidence except his own statement that he bought of the auctioneer and paid Sansberry certain moneys.

The Court: Sansberry is who?

Mr. Durham: Sansberry is the trustee over in Elwood whose jurisdiction was superseded by this court's jurisdiction. He has not offered in evidence the order approving this sale by the referee over there. Now, assuming that court had jurisdiction, he still has not proven it. He has not put in evidence the order of the referee approving the sale, he has not put in evidence his deed. You haven't put that deed in, have you?

Mr. Treiman: We have it here if you want it.

Mr. Durham: I don't want it. He has not put in evidence his deed, so forget the question of jurisdiction of the Indiana court. Suppose you excepted, if you could, you could not; but he has not proved his title. As it now stands, I object to that offer of proof for that reason.

The Court: Objection sustained."

[fol. 111] (Whereupon Petitioner's Exhibit No. 12 was marked for identification, being Trustee's Deed to Benjamin S. Mesirow, and being the same deed set out in Petitioner's Exhibit No. 8.)

Mr. Treiman: May I now offer it in evidence.

Mr. Durham: I object to it, your Honor.

The Court: Sustained.

[fol. 112] "Mr. Treiman: I should like then to make a tender of proof of a trustee's deed reading Trustee's Deed from James C. Sansberry, Trustee in Bankruptcy of National Aircraft Corporation, Bankrupt to Benjamin S. Mesirow, dated and executed June 15, 1944 showing also that it was received for record by the Recorder of Madison County, Indiana on the 29th day of June, 1944.

I wonder if we may have the other exhibits received in evidence now that have been offered and identified except this trustee's deed?

Mr. Durham: I thought they were in evidence.

Mr. Treiman: They were identified but they have not been formally admitted.

Mr. Durham: You have, you concluded you have offered all the evidence.

Mr. Treiman: They had not been formally admitted. I want the record to show they should be.

Mr. Durham: Well, they should be. He said he had offered all the evidence, Judge.

The Court: Well, I have sustained you in that position.

Mr. Durham: I know, but in making my objection I took into consideration these exhibits he had identified and I think they may well go in by reference, that they were put in evidence prior to that statement. You included those documents, Mr. Treiman, in the evidence which you had offered when you said you had offered all the evidence?

Mr. Treiman: Well, if that is the understanding, I just wanted to make sure.

[fol. 113] Mr. Durham: You intended to include those documents?

Mr. Treiman: Certainly.

Mr. Durham: That you had identified previously in your statement?

Mr. Treiman: Certainly.

Mr. Durham: All right, judge, they may go in the record with my consent.

The Court: Very well."

* * *

"Mr. Treiman: Mr. Durham, may it be stipulated for the record that Mr. Sansberry and Mr. Feibleman came to see you in St. Louis shortly after the auction sale was held in Elwood and before the sale was confirmed by the Referee? I think you did tell me.

Mr. Durham: Do you want to confine it just to the fact that they appeared or what really happened over here. He came to see me and I arranged a conference with Judge Moore in chambers, and I will say in connection with that that I issued to them a safe conduct that they would not be served with process while they were over here.

Mr. Treiman: Without getting into all the conference, is it true that they told you at that time the sale had been held up there in Elwood, Indiana?

Mr. Durham: Yes. Now, may I explain that?

Mr. Treiman: Well, you can explain it later.

Mr. Durham: Well, you want to get a little evidence in. The evidence was, I went to Judge Moore and told him that they violated the injunction, and asked him if he had guts enough to cite another Federal judge for contempt, and he said he did, but he looked at me and I saw a little glint in his eye, and he thought maybe I was joking, and he said, 'Mr. Durham, has that ever been passed on by any other appellate court'; I said, 'No, this is a case of first instance, we are construing the Chandler Act'. He said, 'Do you [fol. 114] think you have got a good case'. I said, 'I am sure of it'. Well, he scratched his head—Judge, do you object to this?

The Court: No. Go ahead.

Mr. Durham: Well, he said, scratched his head, 'If I got to, I got to'. Then he looked at me, I must have had a glint in my eye, 'But that will be very embarrassing if I cite a Federal judge over here, and find out you are wrong and I am wrong'. He said, 'Listen, you are lawyer enough to get around that, you will find another way to get that tried, get that issue determined'. I said, 'Yes, Judge, I have already thought it out. I am going to start over there and file objection to the confirmation of sale and if that is overruled and the sale confirmed I am going through as far as the courts will let me go', and it finally went to the Supreme Court. Now, let that be in the record, Judge.

Mr. Treiman: At this time I should like to offer in evidence all of the trustee's reports filed by Mr. Duggan as trustee both in the Christopher Engineering Company matter and in the National Aircraft matter.

Mr. Durham: I object to that because he has not established any right, any interest in this case or any right to maintain this proceeding and that Mr. Duggan is not required to account to Mesirow or anybody else but this court, and we are not going to have his—I am objecting to him going into Mr. Duggan's reports or anything else because it has nothing to do with his title.

The Court: Objection sustained.

Mr. Treiman: Well perhaps then because I am sure the same objection would be raised to the following matters, perhaps I had better go through all these matters.

[fol. 115] In addition to the reports filed by Duggan as trustee I should like to offer in evidence the docket sheets maintained by the Clerk of the United States District Court for the Eastern Division of Missouri in what he calls the Bankruptcy docket.

The Court: Eastern Division of the Eastern District.

Mr. Treiman: Yes. Sheets showing all matters filed in these proceedings including the dates of filing same.

I would also like to offer in evidence at this time the report of Mr. Sansberry which is contained in the files of the Clerk of this Court which Mr. Sansberry prepared and filed at the time when he delivered to Mr. Duggan pursuant to the order of this court certain moneys that were then in his possession amounting to a sum I think in excess of $50,000, showing also that the $18,750 which my people paid for the property was included in the money he was then turning over to Mr. Duggan; and I should also like to have admitted in evidence in this matter the transcript or a record rather of the evidence and the proceedings in the trial on the matter of the petition of Duggan versus Hascal Schneider and Max Schneider and Phil Magidson.

That is my offer of proof.

Mr. Durham: I object to the offer of proof. It is all immaterial in the first place, and he has not shown any

reason why he should be allowed to raise those points or interfere in any of these cases, he is an interloper.

The Court: Objection sustained.

Mr. Treiman: May I then make an offer to establish through the documents which I have asked permission to introduce in evidence the following facts: that when Mr. Sansberry turned over the moneys in his possession to Mr. Duggan pursuant to the order of this Court he included in those moneys the sum of $18,750 which the petitioner in behalf of his trust had paid to Mr. Sansberry as the purchase money for the real estate involved in these proceed-
[fol. 116] ings, that through these documents and records we intend to prove that not [only] was all of that $18,750 expended by the trustee but that even the sum of $8,799.35 which General Motors delivered to Mr. Duggan pursuant to a stipulation confirmed by the order of this Court was disbursed so there is not any part of that fund left.

We offer to prove through these documents that at the present time the trustee has left not more than five or six hundred dollars, and that in all of the accountings that he has made to this Court he has never once in any of his reports indicated that the $8,799.35 was kept or was intended to be kept in a separate account and not to be disbursed without a special order of this Court and we intend by this evidence to prove that at no time has this Court issued a special order authorizing Mr. Duggan to spend any part of that $8,799.35.

Mr. Durham: I object to the offer of proof on the same grounds, that it is an attempt to bring into the record matters that this man has no interest in, that under the concession of Mr. Treiman that he had offered all his evidence on his right to maintain this action, he has refused to recede from that and he is trying to go ahead and try the case by an offer of proof. It is none of his business, I will say, what the trustee had done, if the trustee had taken his money and gone to India it would still be none of Mr. Mesirow's business.

The Court: Objection sustained.

Mr. Treiman: One other statement for the record, Your Honor, by way of explanation of my offer to bring into evidence the record of the proceedings in the trial of Dug-

gan versus Hascal and Max Schneider and Phil Magidson, the purpose of that would be to show that National Aircraft Corporation was not a subsidiary of Christopher Engineering Company and that, therefore, the Court especially in the light of the decision of the Court of Appeals in the case of Duggan versus Schneider and Magidson might well at this time and properly rescind its injunctive [fol. 117] order so far as it applies to the petitioner in this case and order the trustee to revest the petitioner with title and possession of this property and account for all of the rents collected and damages, and so forth.

Mr. Durham: I object to the offer of proof; and I am going to make a suggestion, it at last comes out what I was always sure the basis of this action was. The Court of Appeals in the Magidson case made some statements, made some statements, they did not try that issue whether or not they were a subsidiary or not, did not try that, but they made some indiscreet statements I will say, and since then we have been subjected to further harassment by every person in the country that had any possible theory by which they could claim an interest. We have had these contentions of Mesirow, and come in here and attempt to take it, we have had Sansberry come in here by Mr. Gleick, we have had several other people with motions crowd this Court not on anything tried by the Court, not any motion they had a right to file; it is not his business whether National was a subsidiary or not, he came in here after this Court took jurisdiction and I simply say it has about worn me out. I have had ten years of it.

The Court: It has almost worn this Court out.

Mr. Durham: Well the Court is younger than I am—no, you are about the same age, I think I think I am earlier; and in other words, if you open this up why anybody that wanted to buy, he comes in here and says he wanted to buy the real estate over there and your injunction got in the way, and he bought it anyway. Now, he is claiming a right, I suppose, because he wanted—see, they claim there are three thousand people over there—

The Court: Objection sustained."

[fol. 118] Cross Examination of Witness

(Whereupon Defendant's Exhibit A was marked for identification, being the statement dated May 17, 1946, prepared by Mr. Mesirow and delivered to Mr. Durham. This statement was shown to the witness and acknowledged to be the same document from which he testified on direct examination.)

I made that report from my books for the purpose of reporting to you (Mr. Durham) what I had done with the property while I was in possession. The purpose was to show the amount of money that I had collected and spent on this property. April 1946 was the last month in which I collected rent and I received in that month $1215 which paid the rent up to May 1. After that date I relinquished possession and did not spend any more money on the property. I just turned it back. All the money was spent after April 20, 1944, the first expenditure being the $5,000 deposit on the purchase price. In June 1944 I paid W. O. Wimmer $15.50 for abstracts. On June 20, 1944 I paid Sansberry the balance of the purchase price of $13,750. I did not pay any of that money to Mr. Duggan. I did not know Mr. Duggan at the time. Sometime around the end of May or in June 1944 Mr. Sansberry gave me an abstract of title which I sent to Mr. Wimmer. The only representation I had as to the title was from Sansberry, as disclosed by the abstract submitted to me which was dated up to May 12, 1944. That abstract did not bear the fact that Duggan recorded the decree of this Court over there on May 5. I paid Mr. Sansberry the money on the title that had been examined by Mr. Wimmer and myself.

(Whereupon Mr. Durham showed the witness a photostatic copy of the Recorder's Record in the Recorder of Deeds Office in Madison County, Indiana, and the witness conceded that the typewritten transcript of that record which was introduced as Petitioner's Exhibit No. 9 is the [fol. 119] same as the photostatic copy shown him wherein it appears that Judge Moore's decree was recorded in the Office of the Recorder of Deeds, Madison County, Indiana, as Miscellaneous Record No. 58 on May 5, 1944 at 9:00 A. M.)

The abstract which I received, dated May 12, 1944, makes no reference to Judge Moore's order and decree. I had no actual knowledge of that order and decree. Obviously if it was not in there and it was of record, somebody made a mistake in making that abstract.

Q. (Mr. Durham) Do you mean to say with all these proceedings over there that you never heard anything about this injunction or this decree of the Missouri Court until 1946 after Mr. Feibleman called your attention to the fact that the Supreme Court had ruled his court had jurisdiction? Is that correct?

A. That is absolutely correct.

I had never known that there was anything pending here or anywhere else affecting that title and I had no knowledge of the injunction you just showed me or that there was a Christopher Engineering Company or that there had been any other litigation affecting this property at the time I paid Sansberry the money or at any time from the day Green came to me until I took title.

I was admitted in 1912 to the bar and had an active practice and knew that I was buying at a judicial sale. I knew Sansberry had to have a court order before he could sell the property and that the trustee had to make a report of the auction sale and that it had no validity until approved by the Referee. I made no inquiry whether or not the Referee's order was appealed. The abstract showed that the sale had been approved on May 3. I did not examine the Trustee's report of sale. All the information I got was from that abstract submitted by Sansberry.

[fol. 120] Whereupon Mr. Durham referred to the transcript of record in the United States Supreme Court, October Term, 1944, in the matter of Jerome F. Duggan, Trustee of the Estate of Christopher Engineering Company and National Aircraft Corporation, vs. James C. Sansberry, Trustee of the Estate of National Aircraft Corporation, and the following occurred:

[fol. 121] "Mr. Durham: The trustee's report of sale beginning on page 38 is in your record there, and particularly the matter that appears on page 41. It continues through several pages. I want to read from the paragraph 11 in that trustee's report of sale.

'That immediately prior to the beginning of the auction sale a deputy United States Marshal from the office at Indianapolis served upon the auctioneering firm, served upon the trustee and upon Mr. Adolph Winternitz of the auctioneer firm copies of an injunction or restraining order that had been entered by the United States District Court for the Eastern District, Eastern Division of Missouri, on the preceding day, in the matter of Christopher Engineering Company, a corporation, in which proceeding the National Aircraft Corporation had evidently filed a petition on April 19, 1944, as a wholly-owned subsidiary of said Christopher Engineering Company. That a true copy of said order is attached hereto, made part hereof, and marked Exhibit A.'

That was in the report of the trustee and that report was filed on April 21, 1944.

Do you agree with that?

Mr. Treiman: Yes.

Mr. Durham: Do you agree with my copy of the record?

Mr. Treiman: I do."

|fol. 122| I knew Adolph Winternitz. He had an office in the First National Bank Building in Chicago. I did not discuss this purchase with him. I knew my title would depend upon the validity and accuracy of the trustee's report and that is why I had the abstract brought down and examined by a local attorney who had access to the original records. I relied on my local attorney and the abstract to have the title right.

"Q. On page 34 of the printed record which is trustee's report of sale or certificate on review of trustee's report of sale of assets, page 34, in paragraph—page 51 and 52 of the original record, the referee reports that the trustee in said report, further, showing further that immediately before the beginning of the sale there was served upon him a copy of an order entered in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri in the matter of Christopher Engineering Company, a corporation, in proceedings for the reorganization of a corporation being number 10947 wherein

said court restrains and enjoins said trustee in bankruptcy from doing any act or thing whatsoever affecting the property and assets of the bankrupt, and further enjoining and restraining him from doing any act or thing whatsoever to interfere with the right of one Jerome F. Duggan, trustee of Christopher Engineering Company in said reorganization proceeding to the immediate possession or management of the property and assets of the bankrupt, and further restricting and enjoining said trustee herein from interfering with said Duggan in the discharge of his duties in said reorganization proceedings; and further ordering and directing said trustee herein forthwith to turn over and deliver unto the said Duggan all the property and assets of the bankrupt in his possession or control, said trustee in his said report further showing—now, get this—further showing that at the time of the sale of said assets [fol. 123] it was announced to all persons at said sale that the matter of the approval and confirmation thereof would be heard before the undersigned referee at ten o'clock on Tuesday, April 25, 1944 in the Bankruptcy Courtroom, Room 245 Federal Building, Indianapolis, Indiana, that after being served with a copy of said order in said reorganization proceedings as aforesaid—Judge, you will be interested in this—trustee in bankruptcy herein upon the advice of his counsel with the knowledge of the referee in bankruptcy concluded to proceed with the sale.

That is on page 34 of the record or 52 of the original record.

Mr. Treiman: Before you ask a question about that Mr. Durham, would you be good enough to reciprocate the favor I did you and read another part of that same order?

Mr. Durham: Yes.

Mr. Treiman: The last paragraph of it which appears on page 37, the final order.

Mr. Durham: Wait a minute, just one minute. Before I get to that, remind me of it if I do not read it.

Mr. Treiman: It is in the same order that you are reading from, page 37.

Mr. Durham: At the end of that order, ordered that a copy of this order be sent by mail by the referee to each

of the following, Jerome Duggan as trustee for Christopher Engineering Company and gives his address; J. M. Brown in care of certain lawyers in Indiana, in Anderson, and certain lawyers there; United States Attorney representing the United States Army Air Force—I challenge that, they had no attorney there.

Mr. Treiman: You are not reading now from the order.

Mr. Durham: Well, all right, I will give it to you if you want to take time.

Mr. Treiman: No, as long as it is agreed that a copy of [fol. 124] the order from which read to be sent to Jerome F. Duggan, trustee for Christopher Engineering Company.

Mr. Durham: I will go further than that.

Mr. Treiman: That is enough.

Mr. Durham: I will concede that it was probably received by him.

Mr. Treiman: Very good. That is all. Now you can ask your question about that.

Mr. Durham: Now, there was another phrase in there I want to get in here from this report. Now, that was continued, that first order was continued on April 25 and I will read it. It is on page 43 of the record, Mr. Treiman. Their number over there was 9401. We have confusion on the numbers here but that is the number in Indiana. At the hearing held this 24th day of April, 1944, for consideration of the approval and confirmation of the sale of assets, reported by the trustee in accordance with the order entered on April 21, 1944, the trustee, James C. Sansberry appeared in person and by, Isidore Feibleman of Bamberger and Feibleman and Conrad S. Arnkens, and entered the appearance of the Assistant United States District Attorney, and it appearing that the trustee and his counsel intend to proceed to St. Louis, Missouri to ascertain the facts surrounding the entering of an order [illegible] a judge of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri in the matter of Christopher Engineering Company in proceedings for the reorganization of a corporation being Cause No. 10947—that is our number, Judge—in said court whereby the trustee in bankruptcy herein was restrained and enjoined from doing

any act or thing whatsoever affecting the property and assets of the above-named bankrupt, the referee finds the hearing should be continued without further notice until ten o'clock a. m. on Tuesday, May 2, 1944, and he fixed the place of hearing, and that pending the holding of said further hearing this court retain full and complete jurisdiction over all the assets of the bankrupt."

[fol. 124a] I did not examine these orders. What you are reading to me was not known to me at all.

This statement which I gave you (Mr. Durham) shows, according to my records, that I spent approximately $24,000. I spent $15.50 for an abstract. The item of $7.03 for toll calls to Elwood and Anderson, Indiana, was for a preliminary call to Mr. Wimmer and Mr. Sansberry after Mr. Green turned the matter over to me. There is an item of $300.00 to myself for legal services in organizing the trust. This statement which I brought to you was not intended to indicate anything except what I did with the money I got from General Motors. I paid $31.20 for a waterbill on August 1, 1944, and although the building was vacant at that time, it is customary to keep the water on. On September 5 I paid $43.95 for water bills. There is a small bill here for repairs to floor and stairs of $46.50. I paid a watchman to protect the property and avoid what [fol. 125] has happened to this vacant building since there has been no watchman, and to prevent vandals from getting in there and ruining it. On December 1, 1945, I charged a debit against my beneficiaries in the amount of $950.00 for legal fees but I am certainly not trying to recharge that to Mr. Duggan, the trustee. I did not say anything of that kind. I handed this statement to you as a courtesy to show you what I had done with the money in good faith long before this hearing. This is only a copy of my books of account between myself and my beneficiaries pertaining to Trust No. 140, and with no one else because I had no reason to believe anybody else involved.

On this same statement I reported that I had collected $12,337 for rent up to April, 1946. All the money I spent on the rehabilitation of the roof came out of the first rental payments from the Argonaut Division of General

Motors. I rented the building for eighteen or nineteen months for $15,000 a year.

(Whereupon it was stipulated by the counsel that a copy of the leases between Jerome F. Duggan and the Aladdin Industries, Inc., may be introduced by consent and that the leases were approved by the Court and are in the records of the reorganization proceedings of Christopher Engineering Company, that the leases were for 18 months commencing September 1, 1947, expiring August 31, 1949, at a yearly rental of $16,000.)

I did not put any improvements on the property; General Motors put the roof on and deducted the cost from the first rental payments. I took possession of the property after Sansberry gave me a deed in June 1944 and I was in possession myself or through my tenant from that time until I was ousted by the trustee of this Court in the spring of 1946. After that Duggan took possession on order of this Court. The rent was paid up to May 1, 1946.

[fol. 126] (In the course of the cross-examination of witness Mesirow, a discussion was had between Durham and Judge Moore concerning the alleged purchase of machinery which by amendment had been made part of the counterclaim of the Trustee and the following statements were made:

"Mr. Durham: * * * I believe Mr. Green is a truthful gentleman. I am not challenging his statement.

The Court: I would think so, looking at him on the stand.")

At this point the hearing was adjourned until two o'clock P. M. Monday, November 21, 1955, whereupon the following occurred:

"Mr. Durham: Yes sir. Comes now Jerome F. Duggan before the submission of the cause to the court for judgment and shows to the court that he has filed a counterclaim against plaintiff wherein he claims damages against petitioner and one Charles Green based upon two separate and distinct acts of petitioner and Charles Green, one, that petitioner is severally liable to the defendant for damages for taking and exploiting certain real estate described

in petitioner's complaint; two, that the petitioner and one Charles Green are liable to the defendant for damages for the taking and conversion of certain personal property, and the defendant shows to the court that the petitioner's claim for relief and so much of defendant's counterclaim pertaining to the taking and exploitation of the real estate was tried and is ready for submission, but for the reason that the report of the trustee in bankruptcy and the order of the referee in bankruptcy confirming the sale is ambiguous, contradictory, indefinite and misleading, and the fact that petitioner in his answer to the counterclaim failed to deny that he took or converted any part of the machinery sold and delivered by the Indiana trustee on order of the [fol. 127] Indiana referee as a result of which the defendant was, without fault or negligence, caused to believe that the fact that petitioner took possession and sold a substantial amount of machinery and equipment and that the petitioner would admit such fact on trial and disclose the amount or value thereof on hearing, defendant was taken by surprise when the petitioner and said Charles Green denied as witnesses that either of them took possession or bought any machinery or equipment, that the defendant relying on the record of proceedings at the Indiana court with reference to the sale and disposition of the machinery and equipment, and particularly relying on the failure of petitioner in his answer to deny taking possession of and disposing of said machinery and equipment failed to arrange for evidence to support the charge of his counterclaim with respect to said machinery and equipment, that petitioner has expressed a desire for judgment on his petition and his desire if the judgment was adverse to him to promptly notice an appeal.

Wherefore, plaintiff asked leave to dismiss without prejudice so much of his counterclaim as is based on the allegation that the petitioner converted and sold for his private profits certain personalty of the debtor, the defendant has heretofore by consent dismissed without prejudice so much of his counterclaim as is based upon the allegation that said Charles Green was liable for such taking and conversion, whereupon defendant Jerome F. Duggan, trustee, asks leave to dismiss without prejudice his claim

for relief based upon the charge that petitioner unlawfully and by conversion took and disposed of machinery and equipment of the subsidiary debtor or in the alternative prays that the court may reset pending an investigation by the defendant of the facts and circumstances of the sale and disposition of the machinery and equipment involved—

Mr. Durham: The cause may be reset, that is what I meant for you to read.

[fol. 128] The Court: Is that what you are proposing now?

Mr. Durham: That is my proposal."

* * *

"The Court: Is there any objection from any source to that, any objection at all to that from anybody?

Mr. Durham: I don't know.

Mr. Treiman: I have no objection to the trustee dismissing without prejudice that part of the counterclaim that has to do with the personal property.

The Court: Very well then."

* * *

"Mr. Treiman: Do I understand the Court is prepared and will enter judgment on the petition and balance of the counterclaim.

Mr. Durham: I am submitting—you submitted the case on the petition and counterclaim except as stated.

The Court: Very well. Will you prepare the findings, and that is all there is to it now, is that it?

Mr. Treiman: That is all.

Mr. Durham: Yes, but you haven't told us how you will find the issues. I really think that for the Court's protection a memorandum would be in order because of some complicated law in here and some misleading arguments.

The Court: That is what I started to tell you, to ask you to prepare that. The Court is going to rule in your favor, and I want you to prepare all the necessary findings.

Mr. Durham: All right. You had not told me.

The Court: I can't take care of but one end of it at the time. I never saw you reluctant to draw the findings.

Mr. Durham: Well, the Court of Appeals said it was our duty to prepare them, do you remember?

The Court: Certainly.

Mr. Durham: Well, now, how soon do we have to pre- [fol. 129] pare the suggestions. Shall I prepare them and give a copy of them to Mr. Treiman?

The Court: Certainly. Submit them to him before you bring them to the court.

Mr. Durham: All right, and maybe we can reconcile some differences there.

The Court: Very well."

[fol. 130] (Clerk's Docket Entries.)

1955

April 7—Petition of Benjamin S. Mesirow, Trustee under Trust Agreement k/a Trust No. 140, for an order decreeing Title to Certain Real Estate located in the City of Elwood, Ind., to be vested in petitioner for return of certain monies and for an accounting by Jerome F. Duggan, Trustee, etc., and for other relief, filed.

May 25—Answer and exceptions of Trustee in Reorganization of National Aircraft Corp., subsidiary Debtor, to the petition and demand for relief of Benjamin S. Mesirow, etc., and counterclaim, filed.

October 19—Answer and exceptions of Benjamin S. Mesirow, Trustee under Trust Agreement known as Trust No. 140 to counterclaim of National Aircraft Corp., subsidiary Debtor, Jerome F. Duggan by its Trustee, filed.

November 4—Hearing on petition of Benjamin S. Mesirow for order decreeing title in certain real estate, etc., set for November 17, 1955.

November 17--Motion of Jerome F. Duggan, Trustee for leave to join Charles J. Green as additional party-deft. in the matter of the petition of Benjamin S. Mesirow, etc., and the counterclaim thereto of aforesaid Trustee, filed. presented and order thereon filed granting said motion and ordering Charles J. Green be joined as a deft. to such counterclaim and that said counterclaim be amended by inserting the name of Charles J. Green as additional deft. thereto, and directing copies of order, together with counterclaim, be served upon said Charles J. Green, etc. B. leave Trustee of Debtor amends its aforesaid counterclaim in further respects in accordance with memo, filed. Lashly, Lashly & Miller and Israel Treiman enter their appearance as attys. for aforesaid Charles J. Green, and acknowledge service in open court of motion of Trustee and order thereon in the matter of petition of Benjamin S. Mesirow, etc. Hearing on petition of Benjamin S. Mesirow, Trustee, etc. for order decreeing title in certain real estate, etc., commenced, but not being concluded further hearing thereon postponed until tomorrow at 10:00 A. M.

November 18—Again come parties, whereupon hearing on petition of Benjamin S. Mesirow, Trustee, etc., for order decreeing title in petition to said real estate, etc., and on counterclaim thereof of Jerome F. Duggan, Trustee of subsidiary Debtor, National Aircraft Corp., resumed. Pending such hearing on stipulation of parties filed and presented, motion of Jerome F. Duggan, Trustee, etc., to join additional parties deft., etc., to aforesaid counterclaim withdrawn by leave without prejudice and order entered thereon joining Charles J. Green as deft. to such counterclaim, rescinded. Said hearing progressed but not being concluded at hour of adjournment further proceedings postponed until Monday, next at 2 P. M.

November 21—Hearing on petition of Benjamin S. Mesirow, Trustee for order decreeing title in certain real property, etc., and on counterclaim thereof of Jerome F. Duggan, Trustee of National Aircraft Corp., subsidiary debtor herein; resumed and concluded. On motion of Jerome F. Duggan, Trustee, etc., and with consent of aforesaid petitioner, counterclaim as it pertains to personal property

dismissed without prejudice. Thereupon aforesaid petition of Benjamin S. Mesirow, Trustee and remaining portion of counterclaim of Jerome F. Duggan, Trustee, etc., submitted and counsel for Jerome F. Duggan, Trustee, directed to submit findings of fact, conclusions of law and judgment for approval and entry.

[fol. 131] December 29—Court's memorandum opinion, incorporating its findings of fact and conclusions of law, upon the petition and complaint of Benjamin S. Mesirow, as Trustee for Charles J. Green, et al, for order decreeing title in petitioner in certain real estate located in Elwood, Ind., and on the counterclaim of Jerome F. Duggan, Trustee of National Aircraft Corp., subsidiary debtor in within proceeding in possession as such trustee of such real estate filed, and order and decree in accordance therewith filed ordering that complainant take nothing by his complaint and that respondent have judgment thereon; further that respondent have judgment against complainant on counterclaim in the sum of $28,000, and costs and to have execution therefor, and that complainant pay the costs of proceeding.

1956.

January 23—Notice of appeal of Benjamin S. Mesirow, Trustee, etc., from order entered December 29, 1955, together with cost bond on appeal, filed and said notice of appeal mailed by the Clerk to Geo. O. Durham, Atty. for Trustee of Principal Debtor.

A True Copy: Certified this 8th day of February, 1956.

James J. O'Connor,
Clerk,
By John J. Jarvis
Deputy Clerk.

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JOHN T. FEY, Clerk

In the

Supreme Court of the United States

OCTOBER SESSION, 1956

No. 381

In the Matter of
NATIONAL AIRCRAFT CORPORATION,
a Corporation, Subsidiary Debtor.

JEROME F. DUGGAN, Trustee in Reorganization of
National Aircraft Corporation, Subsidiary Debtor,
Petitioner,

vs.

CHARLES J. GREEN, Substitute Trustee Under Trust
Agreement Known as Trust No. 140, etc.
Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit

SIBSON PRESS, 210 South Seventh Street, St. Louis 2, Mo.—CHestnut 1-0950

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In the

Supreme Court of the United States

OCTOBER SESSION, 1956

No._____

In the Matter of
NATIONAL AIRCRAFT CORPORATION,
a Corporation, Subsidiary Debtor.

JEROME F. DUGGAN, Trustee in Reorganization of National Aircraft Corporation, Subsidiary Debtor,
Petitioner,

vs.

CHARLES J. GREEN, Substitute Trustee Under Trust Agreement Known as Trust No. 140, etc.
Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner Jerome F. Duggan, as Trustee in Reorganization for the National Aircraft Corporation, a Subsidiary Debtor, by appointment of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, in a proceeding for the reorganization of the

subsidiary debtor aforesaid, files this his petition and respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit rendered on appeal from a judgment of the aforesaid District Court on a controversy arising in said proceeding in Bankruptcy, in which the respondent herein was duly substituted as appellant and this petitioner was appellee.

The jurisdiction of this Court is invoked because of the public importance of the decision involved and its effect on the interpretation and application of the Bankruptcy Act; and of its effect on the orderly administration of said Act and its effect as tending to impair the exclusive jurisdiction of reorganization courts over the assets of debtors; and its effect on the maintenance of the judicial dignity of reorganization courts and the enforcement of their lawful orders and injunctions free from interference by unauthorized persons.

RECORD ENTRIES.

The opinion of the Court of Appeals was announced on February 4, 1957.

Subsequently and on April 15, 1957, the Court of Appeals, on petition of the respondent herein, modified its opinion of February 4, 1957, and overruled respondent's petition for rehearing.

Whereupon, this petitioner filed his renewed and supplemental petition for rehearing and to clarify or transfer to the Court en banc, which the Court received and on consideration thereof overruled same on May 9, 1957.

The jurisdiction of this Court for the purpose sought is conferred by the Judicial Code as amended, 11 USC, 1254.

A copy of the opinion of said Court of Appeals and the modification and final order is appended hereto.

QUESTIONS.

Question 1:

Whether or not one claiming confirmation of a title to certain real estate of a debtor in reorganization on the basis of a judicial sale by a Court having no jurisdiction of the subject matter, such alleged judicial sale being consummated in violation of the exclusive jurisdiction of a reorganization Court over the person and property of a debtor, may a Court, having adjudged such sale or purchase void, award such alleged purchaser a special lien against the subject matter of the alleged void sale in any sum or in a sum calculated to reimburse the alleged purchaser for his loss or damages sustained as the result of his void purchase upon finding that the alleged purchaser was without actual knowledge of the facts rendering his purchase void and that, though charged with constructive knowledge thereof by recitations and records of the Court, from whom he acquired his void title, and from records in the Recorder of Deeds office of the County wherein the real estate was located, that the authority of his alleged vendor to make said judicial sale had been superseded and enjoined by the recording of the order and injunction of the Court having actual jurisdiction of the property.

Question 2:

Congress under its constitutional power having prescribed such claims as may be allowable and payable in bankruptcy, with provision for their priority, may a Court of the United States allow and provide for the payment from the assets of the debtor of a claim based on general equitable principles but not provided for by the Bankruptcy Act?

Question 3:

May a Court allow a claim based solely upon the Court's construction of the general rules of equity and provide for its payment by assessing it as an equitable lien against specific property of a debtor, the allowance of such equitable claim not being authorized by any provision of the Bankruptcy Act, nor authorized by any other valid statute?

Question 4:

May a Court allow against the estate of a debtor a claim based solely upon general rules of equity having its source and arising subsequent to the admission of the debtor to reorganization, such equitable claim not within Section 63 of the Bankruptcy Act defining allowable claims, and prescribing their classification priority, and by the devise of charging such claim as an equitable lien on an asset of the debtor in effect gives it a priority over all other demands and claims against the estate, including the cost of administration, taxes and demands generally?

Question 5:

May a Court, having found that the claimant was claiming under a sale void as being in conflict with the jurisdiction and injunction of the reorganization Court, proceed and allow the claimant a sum calculated to compensate him for business asset losses incurred by him as the result of such void purchases and sale and by the device of allowing him an equitable lien on the property constituting the subject matter of the void purchase award him priority over all other demands against the assets or provide that in the event of deficiency resulting on the foreclosure of said equitable lien authorize the filing of a claim for such deficiency?

Question 6:

May a Court, upon concluding that at the time of consummating an alleged purchase of property of a subsidiary debtor, claimant was innocent and without actual knowledge that his alleged purchase thereof was void and constituted an unlawful interference with the jurisdiction and injunction of the Court, award him an equitable lien against an asset of a subsidiary debtor when it appeared by his petition and the evidence that subsequent to the alleged consummation of his unlawful purchase and at a time when he had full knowledge of facts rendering the purchase void he sought the processes of the Court to confirm and declare his title to the subject matter of the void sale?

Question 7:

May one who petitions for consummation of a void title with full knowledge of the facts rendering his title void be granted equitable relief on a finding that at a time prior thereto he had expended money in ignorance of the facts which rendered his acquisition void?

STATEMENT

The opinion of the Court below was rendered on a petition of the respondent filed in the District Court below on April 7, 1955 (R. 1-17).

In substance the respondent alleged that he was the legal or equitable owner of certain real estate of the Subsidiary Debtor located in Madison County, Indiana, and then in the possession of this petitioner as Trustee in reorganization. He based his alleged title upon an alleged purchase at a judicial sale of the assets of the Subsidiary Debtor then allegedly a bankrupt in an involuntary proceeding in bankruptcy pending in the said Indiana Court.

It appeared that the power and authority of the Indiana Court and its Trustee to effect a sale of the assets of the Subsidiary Debtor had been superseded by an Order of the Missouri Court admitting the Subsidiary Debtor to reorganization and enjoining further proceedings by the Indiana Court and expressly enjoining its trustee from proceeding with the sale under which respondent claimed title, and that the power and authority of the Court and its Trustee to effect a sale had been judicially determined, adverse to the respondent's claim of title, by a decision of this Court rendered on an appeal from the order confirming the sale on which the respondent relies for title by this Court in the case of Jerome F. Duggan, etc., v. James C. Sansberry, etc., 327 U. S. 499, 90 L. Ed. 809.

The respondent prayed for a finding that National Aircraft Corporation was not at any time a Subsidiary of the original Debtor involved and for a finding that this (the Missouri) Court was without jurisdiction to enter its Order of April 19, 1944 (admitting the Subsidiary to reorganization and enjoining further proceedings in the Indiana Court). The petition further prayed for an Order directing

that the Order of the Missouri Court appointing this petitioner Trustee of National Aircraft Corporation and enjoining further proceedings in the Court of Bankruptcy in Indiana be vacated and held for naught, and that this petitioner be required to quit-claim the property involved to the respondent for lack of jurisdiction of the District Court in Indiana and its Trustee, Jerome F. Duggan, Trustee, etc., v. James C. Sansberry, Trustee, etc., 327 U. S. 499.

The District Court denied respondent's claim of title, legal or equitable, on the ground that the sale under which respondent claimed was had in violation of the reorganization Court's jurisdiction over the Subsidiary Debtor and its assets and in violation of its injunction against interference with the assets. That the alleged judicial sale was unauthorized by the reorganization Court, that respondent's purchase thereat was void and that respondent stood in the position of a volunteer and trespasser and was not entitled to equitable relief from the consequences of his wrong at the expense of the estate and the District Court further awarded this petitioner a judgment on his counterclaim.

The respondent appealed and Court of Appeals by its judgment agreed with the District Court that respondent's alleged purchase was void and conferred no title on the respondent, but nevertheless concluded that on general principles of equity the respondent was entitled to an equitable lien against the real estate to which he was claiming title on the theory that he was "innocent" and without "actual" knowledge of the infirmity of his vendors title when he consummated his alleged purchase, and entered into possession of the property, and was equitably entitled to a lien against the real estate for his purchase money, and for his net expenses by way of and cost of operating and maintaining and exploiting the property

with interest on the unreimbursed part thereof until foreclosure of the lien.

The Court of Appeals reversed the judgment for this petitioner on his counterclaim on concluding that there was no basis in the laws to support it.

The Court of Appeals thereafter modified its judgment on motion of the respondent by providing that in the event there was a deficiency on the foreclosure of the equitable lien, that its judgment should be without prejudice to any claim which the respondent might thereafter file to recover such deficiency from the general assets of the estate.

The District Court denied equitable relief to respondent on the finding that his sole relationship to the property of the Subsidiary Debtor to which he was claiming title was that of a voluntary trespasser and interloper (R. 68). The Court of Appeals on its finding that at the time he purchased the property from the unauthorized Court and Trustee and took possession of the property and disbursed the purchase price and paid for improving the property, for its protection, leasing and insuring it he was without "actual" knowledge of the fact that exclusive jurisdiction over the property had vested in the reorganization Court below by its Order approving the petition of the Subsidiary Debtor for reorganization and its injunction in aid of its jurisdiction.

Accordingly, the Court of Appeals ruled that though respondent had constructive knowledge through reference to the Order of the Court below and its injunction in the record of the proceeding through which he claimed title and through its having been recorded in the Recorder's Office for the County in which the real estate was located some forty (40) days before he consummated his alleged purchase, he was nevertheless innocent because the doctrine of constructive notice is without application (and)

his good faith can be challenged only on the ground that he had actual knowledge of such facts and circumstances as would have put a man of ordinary circumspection upon inquiry and deliver the possession of the same to petitioner, and for an Order on the petitioner to account for all monies received by him as rental or otherwise from the aforesaid real estate.

The petition also prayed for damages sustained by him as a result of his being deprived of the use and profit of the real estate from March 6, 1946, to date with interest thereon, together with a judgment for such penalties as respondent might have to pay to discharge the real estate involved from tax liens and for the payment to the respondent of a reasonable attorney's fee.

The petition concluded with a prayer for such other and further relief as equity may require (R. 15-16).

The petitioner in this proceeding is a Trustee in reorganization for National Aircraft Corporation, Subsidiary Debtor, by appointment of the United States District Court in Bankruptcy for the Eastern Division of the Eastern Judicial District of Missouri, hereinafter referred to as the Missouri Court. The respondent is a beneficiary and successor trustee of a private trust to one Benjamin S. Mesirow, deceased, and has been substituted on the record for said Mr. Mesirow and the said Trustee and his successor will be referred to hereinafter indifferently as respondent.

Before the voluntary petition of the Subsidiary Debtor for reorganization was approved by the Missouri Court, the Subsidiary Debtor had been adjudged a bankrupt in a proceeding in Involuntary Bankruptcy pending in the United States District Court for the Southern Judicial District of Indiana. Said Court will hereinafter be referred to as the

Indiana Court and its Trustee, James C. Sansberry, as the Indiana Trustee.

On April 19, 1944, when the Subsidiary Debtor's petition for reorganization filed and approved in the Missouri Court, Mr. Sansberry, the Indiana Trustee, had avertised a sale of the bankrupts' or Subsidiary Debtor's assets for April 20, 1944, and the Missouri Court on approving the Subsidiary's petition enjoined the Indiana Court and its Trustee from interfering with or selling its assets and ordered them turned over to this petitioner named reorganization Trustee.

A certified copy of the order and injunction of the Missouri Court was duly served on the Indiana Trustee and his auctioneer before his sale commenced, notwithstanding which the Indiana Trustee proceeded with the advertised sale, announcing only that his sale would be subject to the approval of his Referee.

The Trustee thereupon filed his report of sale with the Referee for approval and attached thereto the certified copy of the Missouri Court's order approving the Subsidiary Debtor's petition for reorganization and appointing this petitioner its trustee in reorganization and its injunction directed to Mr. Sansberry and his auctioneer enjoining them from proceeding with the advertised sale. The Trustee's report also attached and recited due service of said Order and injunction upon him before his sale commenced.

Thereupon the Referee continued the hearing on the report of the Referee for the recited purpose of permitting Mr. Sansberry, the Trustee, and his attorney to proceed to St. Louis to investigate the facts and circumstances relating to the Missouri Court's Order and injunction. Upon further hearing on the report pursuant to the continuance, the Referee, reciting that Mr. Sansberry and his

counsel reported that they had visited St. Louis and conferred with various parties but had not submitted themselves to the jurisdiction of the Missouri Court, approved the report of the Trustee and authorized him to consummate the sale upon receipt by him of the purchase price.

Whereupon, this petitioner filed a certified copy of the Missouri Court's Order and injunction for record in the office of the Recorder of Deeds for Madison County, Indiana, and petitioned for and was allowed a review by the Judge of the Indiana Court of the Referee's Order approving the sale in question and ordering its consummation upon receipt of the purchase price.

On hearing on the review the Judge affirmed the ruling of the Referee and the petitioner, in due time, noticed an appeal to the Court of Appeals for the Seventh Circuit, and petitioned and was allowed certiorari by this Court on the ground among others that two Courts of the United States were at one and the same time exercising or attempting to exercise conflicting jurisdiction over the assets of the Subsidiary Debtor.

This Court on a hearing sustained the jurisdiction of the Missouri Court and the effectiveness of its Order and injunction and denied the jurisdiction of Mr. Sansberry and the Indiana Court to proceed after the service of the injunction.

In the meantime and while the litigation attacking the Referee's Order was pending, and some forty days after a certified copy of the Order and Injunction aforesaid were filed and recorded under the provisions of Section 21 of the Bankruptcy Act (11 USC 44), the Respondent and the Indiana Trustee consummated the alleged purchase by paying to the Indiana Trustee the sum of $18,750.00, and took and recorded the Trustee Deed under which the claims and by authority of the Indiana Trustee entered

upon the possession of the real estate involved and used and exploited it until May 6, 1944, when this petitioner, upon the mandate of this Court coming down, entered upon and received possession thereof from the respondent's tenant.

At the time petitioner took possession the tenant in possession owed no rent, having paid its rent in advance to respondent. After petitioner took possession on May 6, 1944, he allowed the tenant to continue in possession until the sum of $ ..... rent had accrued for the period after petitioner took possession. These accrued rents were subsequently paid by the tenant to this petitioner upon an Order of the Missouri Court.

SUMMARY.

The petitioner submits that this proceeding is simply a belated effort by a trespasser contemnor and volunteer to reanimate and render effective, at least in part, an alleged jurisdiction of the Indiana Court which was finally litigated in an action between this petitioner and respondent's alleged grantor, whose jurisdiction was under attack, and finally resolved by the opinion of this Court in the case of Duggan v. Sansberry, supra.

On the strength of that opinion the Court below denied this respondent's alleged title based upon the sale under inquiry in the latter case but at the same time awarded him an equitable lien against the subject matter of the void sale to compensate him for his cost of acquiring his void title and for all his expense with interest at 6% per annum until paid or until the lien is foreclosed and subsequently modified its opinion by providing that in the event the foreclosure of the lien resulted in a deficiency, that the judgment should be without prejudice to a claim for any deficiency.

ARGUMENT

The respondent had prayed for general equitable relief and on the trial Mr. Mesirow, then trustee, and Mr. Green, a beneficiary of said trust and now the respondent of record, testified that they had no actual knowledge of the order of the district court below (Missouri) until some two years after they had consummated their alleged purchase with Mr. Sansberry, the trustee in involuntary bankruptcy for the subsidiary debtor pending in the Indiana Court, paid the purchase money to Mr. Sansberry, took his deed and entered into possession of the real estate in question and exploited it until upon the opinion of the Supreme Court in the Duggan v. Sansberry case coming down on May 6, 1946, Mr. Sansberry's attorneys advised him in effect of the review, appeal and decisions of the adverse decision of the Supreme Court which was the first knowledge he or any of the beneficiaries had of the several proceedings and thereafter about May 1, 1946, Mr. Duggan as trustee advised the tenant of this real estate that he owned the property and advised the tenant to pay the May, 1946, rent and subsequent rent to him and that he then took over (Op. 7).

On the equitable issue the District Court found:

> "On his testimony that he did not hear of this Court's decree and injunction until some two years after the alleged consummation of the sale to him by Mr. Sansberry, the complainant urges that he is an innocent and bona fide purchaser of the real estate involved and entitled to relief."
>
> "Regardless of actual knowledge the complainant with knowledge thereof from the fact that notice thereof appeared in the orders of the Indiana Court constituting his chain of title and the fact that a copy of this Court's decree and injunction was recorded in

the recorder's office for Madison County on May 5, 1944, under the provisions of 21 (g) (11 USC 44) of the Act some forty days prior to the consummation of the sale under which complainants claim."

"The Court further finds that an order of the Reference confirming the sale was a necessary step in the chain of title on which complainant relies. The order was appealed and never became binding or effective. Accordingly and regardless of the so-called clash of jurisdiction between the Courts, the title on which the complainant relies was void and of no effect in any event."

"The Court further finds that by undertaking to consummate with Mr. Sansberry the said purchase and sale, and entering into the possession of the property involved and maintaining such possession without the consent of this Court or its trustee that the relationship of the petitioner to the property in question was in effect that of a contemnor, interloper, trespasser and volunteer, and that the complainant derived no rights thereby either legal or equitable or enforceable against the real estate involved herein or against the assets of the subsidiary debtor in the exclusive possession of this Court and its trustee" (R. 64, 65).

The trial Court further found and recited:

"On the basis of his denial until some two years after the consummation of the alleged sale and his entry into possession of the real estate involved and on the theory that he is an innocent purchaser of the property from Mr. Sansberry he claims some equity in the property."

"Regardless of the truth or falsity of his denial, it appears, as heretofore found by the Court, that the complainant was charged with knowledge thereof by operation of law. In any event it appears from the record and complainant's evidence that he had been a practicing lawyer at the Chicago bar since 1912; that Mr. Green and his several associates and bene-

ficiaries had been engaged in attending bankruptcy and liquidation sales of distressed business organizations and purchasing their assets for speculative resale. Prior to consummating the alleged sale the complainant employed a Madison County lawyer who appeared to be a title examiner as well to advise him in the consummation of the sale. In view of the evidence it would appear that the petitioner either had acquired actual knowledge of the decree and injunction or had an amazing ability to avoid acquiring such knowledge. In any event the Court finds from the evidence that the petitioner's relationship to the property in question was that of a mere volunteer, trespasser and interloper and that by reason thereof and by his constructive knowledge from the records from which he claims that he is barred from equitable relief from this Court" (R. 65, 66).

The Court of Appeals, however, concluded from the same oral evidence that neither the appellant or any beneficiary of his trust had any actual knowledge of any fact or circumstance indicating invalidity of the sale at the time he paid the purchase price for the real estate or at the time he disbursed the moneys above stated for the improvement, protection, leasing and insuring that property until March 30, 1946, when he was advised by an attorney for Sansberry of the above mentioned petition for review, appeal and decision (Op. 14).

The Court of Appeals commenting on this petitioner's argument that the respondent cannot be found innocent because he was charged with constructive notice of the Missouri Court's decree and injunction through the reference thereto in Mr. Sansberry's report of sale of April 21, 1944, and by a recording of a copy of that decree and injunction in the office of the Recorder of Madison County, Indiana, on May 5, 1944, before the complete consumma-

tion of the sale (but as stated, neither of those matters were in any way referred to in the abstracts of title covering this property that were furnished to the appellants) (Op. 14) and the Court of Appeals ruled:

> "The law is clear that, in circumstances like the present, where the actual good faith of the purchaser is the issue 'the doctrine of constructive notice is without application (and) his good faith can be challenged only on the ground that he had actual knowledge of the defects in the title, or knowledge of such facts and circumstances as would put a man of ordinary circumspection upon inquiry" (Op. 14).

Continuing, the Court of Appeals ruled that:

> "Appellant was without actual notice of any fact, indication, invalidity of the sale or of any circumstance sufficient to put him upon inquiry in that respect until March 30, 1956, by which time he had paid out the moneys in question and, hence, there is no basis for impugning his actual innocence and good faith" (Op. 14).

The Court of appeals while absolving the respondent of any guilt of violating the lower Court's decree and injunction at the time he consummated the alleged sale and concludes as relevant and significant in that respect the fact that his petitioner failed to give any notice to Mr. Mesirow or any beneficiary of his trust the fact that he had filed a petition for review of the order of the referee approving and confirming the sale under which he claimed, that upon affirmance of the order of the referee without **supersedeas** (accent supplied) appealed to the Seventh Circuit, which likewise affirmed (Op. 7). Duggan then petitioned the Supreme Court for and was granted Certiorari, on which the Supreme Court held that the Indiana sale of this real estate was void and passed no title to the respondent.

Accordingly the Court of Appeals reversed the District Court and granted the respondent an equitable lien on this real estate in the sum representing the purchase price paid in consummation of the "void" sale and for the sums he expended for its improvement, maintenance, protection, insurance and leasing to produce income less the income and profits he derived therefrom while in possession, with simple interest or unreimbursed month' balances, computed at six per cent until dispossessed on May 1, 1946, and to simple interest at the same rate on the principal balance then remaining unpaid to the date of the foreclosure of the lien. And we compute and determine the amount of the lien to which the appellant is entitled to January 1, 1957, as follows:

The Court thereupon computed that there was due appellant as of May 1, 1946, the sum of $10,220.29, with interest on monthly balances to May 1, 1946, in the sum of $1,871.53, together with simple interest at six per cent per annum on the principal balance of $10,220.29 unreimbursed on May 1, 1946, from that date until January 1, 1957, in the amount of $6,721.00 and calculated the amount of the equitable lien to January 1, 1957, at the sum of $18,812.82.

And on the finding that there was no basis in the evidence and the law to support the judgment for $28,000.00 entered in favor of this petitioner on his counterclaim. The Court of Appeals accordingly reversed the judgment of the District Court and remanded the cause to the District Court with directions to grant and decree to appellant an equitable lien upon said real estate in the amount of $18,812.82 to bear interest at the rate of six per cent per annum from January 1, 1957, to the date of payment or foreclosure of said lien.

The judgment of the Court of Appeals was rendered on February 4, 1957, and subsequently Mr. Meirow having

died and Mr. Green being substituted on the record for him, the Court on his motion modified its judgment by providing that in the event there was a deficiency on a foreclosure of the equitable lien that its judgment should be without prejudice to any claim the respondent might file to recover such deficiency from the general assets of the estate.

To which judgment and modified judgment this petitioner duly filed his motions for rehearing, which the Court of Appeals considered and overruled, as appears from the docket entries supra.

CONCLUSION

In view of our detailed statement we have refrained from discussing at length the subject matter embraced in the seven Questions propounded, and we do not wish to be considered as having waived any of the questions raised.

Respectfully submitted,

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No. 381.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

NATIONAL AIRCRAFT CORPORATION,
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JEROME F. DUGGAN, Trustee in Reorganization
of National Aircraft Corporation,
Subsidiary Debtor,
Petitioner,

vs.

CHARLES J. GREEN, Substitute Trustee Under Trust
Agreement Known as Trust No. 140,
Respondent.

BRIEF

Of Respondent, Charles J. Green, Substitute Trustee Under Trust Agreement Known as Trust No. 140, in Opposition to Petition for Writ of Certiorari.

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Respondent.

BRIEF

Of Respondent, Charles J. Green, Substitute Trustee Under Trust Agreement Known as Trust No. 140, in Opposition to Petition for Writ of Certiorari.

OPINIONS BELOW AND JURISDICTION.

The opinion of the Court of Appeals for the Eighth Circuit on original submission is reported at 240 F. (2d) 751, and the per curiam opinion of that court modifying its original opinion is reported at 243 F. (2d) 109.

The petitioner has invoked the jurisdiction of this Court under Title 11, United States Code, Section 1254, which is

a section of the Bankruptcy Act concerning Railroad Adjustments which has been repealed. It is believed that petitioner intended to invoke the jurisdiction of this Court under Title 28, United States Code, Section 1254; on that basis, respondent raises no questions concerning the jurisdiction of this Court.

QUESTIONS PRESENTED.

The petitioner asserts that seven questions are presented for review. Actually, only one question is presented by the petitioner:

> Whether a Court may invoke universal and age-old equitable principles to prevent unjust enrichment against a Reorganization Trustee who derives his authority under the National Bankruptcy Act, Title 11, United States Code, and award adequate remedies against the estate of the debtor to protect innocent persons from the inequitable conduct of such a Reorganization Trustee in Bankruptcy.

STATEMENT.

Petitioner's statement of the proceedings below is substantially correct. However, in order that this Court may be apprised of all the facts upon which this litigation is based, the respondent adopts as his statement of facts the recitation of said facts as set out in the opinion of the Court below, reported in 240 F. (2d) 751, at pages 752-756. The historical background of these reorganization proceedings which have resulted in widespread and prolonged litigation were before this Court and are set out in the opinion in **Duggan v. Sansberry** (1946), 327 U. S. 499, 500-503. It was in this confused and contradictory atmosphere that respondent, on behalf of the beneficiaries of his trust, purchased the property involved in innocence and good faith.

ARGUMENT.

The petitioner in seeking certiorari has not established any of the grounds upon which the writ of certiorari of this Court is customarily issued.

A. The petitioner does not even assert the existence of a conflict between the decision as to which review is sought and that rendered by this Court or any Court of Appeals. There is in fact no such conflict and the decision below turns upon its own facts.

B. The petitioner asserts (Petition, p. 2) that the jurisdiction of this Court is invoked because of the "public importance of the decision involved." No attempt, however, is made to demonstrate to this Court any such importance. The petitioner's Argument (Petition, pp. 13-18) is merely a recital and restatement of the facts by the petitioner and of the findings of the District Court and the Court of Appeals.

The decision of the Court of Appeals below rests upon and is circumscribed by the particular facts of the case and few other litigants, if any, may possibly be affected by it. The issue involved in this litigation arose out of a long history of developments in the reorganization proceedings of National Aircraft Corporation and Christopher Engineering Company which have, on prior occasions, come before this Court, as well as the Supreme Court of Missouri, the United States Court of Appeals for the Seventh Circuit and the United States Court of Appeals for the Eighth Circuit. **Duggan v. Sansberry** (1946), 327 U. S. 499; **Oglesby & Simpson Supply Co. v. Duggan** (C. A. 8, 1949), 174 F. (2d) 904; **Magidson v. Duggan** (C. A. 8, 1950), 180 F. (2d) 473; **United States v. Duggan** (C. A. 8, 1954), 210 F. (2d) 926; **Magidson v. Duggan** (C. A. 8, 1954), 212

F. (2d) 748; **State ex rel. Duggan v. Kirkwood** (1948), 357 Mo. 325, 208 S. W. (2d) 257; **Duggan v. Sansberry** (C. A. 7, 1945), 149 F. (2d) 548.

The respondent here was wholly innocent of the commencement or the pendency of the proceedings instituted by the Reorganization Trustee in the Indiana District Court at the time he purchased the real estate involved and, indeed, for a period of approximately two years thereafter. The respondent was the innocent victim of what this Court in **Duggan v. Sansberry**, 327 U. S. 499, 500, described as "a clash of jurisdiction," and he was victimized by the unconscionable conduct of the petitioner in failing to notify respondent for a period of almost two years of the adverse claim asserted against the property which he in good faith and innocence had purchased at a judicial sale conducted by the District Court in Indiana.

Questions resolved by the opinion of the Court below arose solely because of the peculiar facts of this astonishing reorganization proceeding and were created by the ex parte order of the Missouri District Court on April 19, 1944 (R. 103-105, Petitioner's Brief, p. 10; see opinion below 240 F. [2d] 751, 753). Validity of that order and the facts upon which it was based have importance only to these litigants, and the consequences of the actions taken by the District Court of Missouri, and by the Reorganization trustee, petitioner here, have significance only to this litigation. The opinion of the Court of Appeals for the Eighth Circuit in **Magidson v. Duggan** (1954), 212 F. (2d) 748, demonstrates the limited but highly significant importance of the conduct of this particular reorganization proceeding. That Court said:

> "There was, in our opinion, no adequate evidentiary basis for the findings of the District Court that National was ever a subsidiary of Christopher Engineering or that these corporations and the partnerships

of Brown and Christopher were to all intents and purposes a single entity or enterprise. These findings, we think, are clearly erroneous. * * *" (l. c. 758).

* * * * * * * *

"The history of these reorganization proceedings, out of which so much litigation has arisen, has been stated in greater detail than is necessary to present the questions under review. This has been done in part for the purpose of illustrating the unfortunate results which flow from drawing into reorganization proceedings under Chapter X of the Bankruptcy Act corporations which should be liquidated, and of unnecessarily interfering with proceedings in a state court and with prior bankruptcy proceedings in other jurisdiction. * * *" (l. c. 760).

The Court of Appeals, by its decision in the instant case, has corrected and adjusted the equities of the litigants here and that decision was based upon its own peculiar facts which were the result of a conflict of jurisdiction between two Federal District Courts and the extraordinary conduct of the petitioner in asserting the right to retain both the proceeds of a sale and the subject of the sale. Such a peculiar and inequitable situation and the solution thereof, while of considerable importance to the parties to this litigation, do not involve any novel or important questions for the attention of this Court.

C. The decision of the Court of Appeals below is clearly correct on the issues presented. The Court, with some obvious feeling for the injustice of petitioner's conduct, stated at 240 F. (2d) 751:

"The overriding equitable issue involved in this appeal is whether a bankruptcy trustee can, in conscience, be permitted, over the protest of an innocent purchaser, to retain both the real estate offered at

auction, and the money paid for it by such innocent purchaser, at a void sale" (l. c. 752).

* * * * * * *

"Of the several other theories of attack upon the judgment there is one that is so entirely clear and completely conclusive, and that so perfectly lends itself to the adjustment of the equities between the parties, that we put aside all others. That attack is based upon the universal and age-old equitable principle that one who sells real estate, at a void judicial or quasi-judicial sale, to a purchaser who pays the purchase price in good faith and without actual knowledge of facts or circumstances rendering the sale void, may not, in conscience, be permitted to keep both the real estate and the purchase money; and that, if, as here, specific performance cannot be had, the purchaser is entitled to an equitable lien upon the real estate in an amount equal to the purchase price paid for it plus his costs of permanent improvements made thereon and his expenses in maintaining and protecting the same, less rents and profits received by him therefrom, with simple interest, at the applicable legal rate, computed upon unreimbursed balances. Typical of the many cases so holding are Shanklin v. Ward, 291 Mo. 1, 236 S. W. 64; Patillo v. Martin, 107 Mo. App. 653, 83 S. W. 1010; Henderson v. Langley, 76 Mo. 226; Townsend v. Tipton, 289 Ky. 776, 160 S. W. 2d 161, 142 A. L. R. 306; Faughnan v. Bashlor, 1927, 163 Ga. 525, 136 S. E. 545; Federal Reserve Bank of Kansas City v. Omaha National Bank, 8 Cir., 45 F. 2d 511; Beatty v. Guggenheim Exploration Co., 225 N. Y. 380, 122 N. E. 378; Scott on Trusts, Vol. 3, Sec. 462.2, p. 2317; Pomeroy on Equity, Sec. 1053.

"Though in this instance, the purchase price paid by appellant for this real estate was not originally paid to Duggan, Trustee, but to Sansberry, Trustee, that

money was paid over by Sansberry to Duggan in July, 1946, with the result that since that time, Duggan, Trustee, has had both the real estate and the money paid by appellant for its purchase. In those circumstances, it would be shockingly inequitable and unjust to permit him to retain both" (l. c. 757-758).

Petitioner asserts that general equitable principles have no application in matters involving a Reorganization Trustee and asks this Court to review a decision of the Court of Appeals which corrected shockingly inequitable and unjust conduct of such a Trustee. In this assertion, petitioner is clearly in error.

The applicability of equitable principles in the administration of the affairs of a bankrupt is clearly demonstrated by the decided cases. This Court, in **Prudence Realization Corporation v. Geist** (1942), 316 U. S. 89, 95, said:

"* * * The court of bankruptcy is a court of equity to which the judicial administration of the bankrupt's estate is committed. Securities & Exch. Commission v. United States Realty & Improv. Co., 310 U. S. 434, 455-457, 84 L. ed. 1293, 1303-1305, 60 S. Ct. 1044, 42 Am. Bankr. Rep. (N. S.) 602, and it is for that court—not without appropriate regard for rights acquired under rules of state law—to define and apply federal law in determining the extent to which the inequitable conduct of a claimant in acquiring or asserting his claim in bankruptcy requires its subordination to other claims which, in other respects, are of the same class. Cf. Taylor v. Standard Gas & E. Co. 306 U. S. 307, 83 L. ed. 669, 59 S. Ct. 543, 38 Am. Bankr. Rep. (N. S.) 692, supra; Pepper v. Litton, 308 U. S. 295, 84 L. ed. 281, 60 S. Ct. 238, 41 Am. Bankr. Rep. (N. S.) 279, supra" (l. c. 95).

In the earlier decision in **Pepper v. Litton** (1939), 308 U. S. 295, this Court granted certiorari because of an ap-

parent restriction by the lower court decision on the power of the bankruptcy court in the exercise of its broad equitable powers. Mr. Justice Douglas speaking for the Court discussed the applicability of equitable principles in proceedings under the Bankruptcy Act and said:

> "Courts of bankruptcy are constituted by §§ 1 and 2 of the Bankruptcy Act ([July 1, 1898] 30 Stat. at l. 544, chap. 541, 11 U. S. C. A., §§ 1, 11) and by the latter section are invested 'with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings.' Consequently this Court has held that for many purposes 'courts of bankruptcy are essentially court of equity, and their proceedings inherently proceedings in equity.' Local Loan Co. v. Hunt, 292 U. S. 234, 240, 78 L. ed. 1230, 1232, 54 S. Ct. 695, 93 A. L. R. 195, 24 Am. Bankr. Rep. (N. S.) 668. By virtue of § 2 a bankruptcy court is a court of equity at least in the sense that in the exercise of the jurisdiction conferred upon it by the act, it applies the principles and rules of equity jurisprudence. Larson v. First State Bank (C. C. A. 8th), 21 F. (2d) 936, 938, 10 Am. Bankr. Rep. (N. S.) 588. Among the granted powers are the allowance and disallowance of claims; the collection and distribution of the estates of bankrupts and the determination of controversies in relation thereto; the rejection in whole or in part 'according to the equities of the case' of claims previously allowed; and the entering of such judgments 'as may be necessary for the enforcement of the provisions' of the act. . . . The bankruptcy courts have exercised these equitable powers in passing on a wide range of problems arising out of the administration of bankrupt estates. They have been invoked to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial

justice from being done. By reason of the express provisions of § 2 these equitable powers are to be exercised on the allowance of claims, a conclusion which is fortified by § 57 (k). For certainly if, as provided in the latter section, a claim which has been allowed may be later 'rejected in whole or in part, according to the equities of the case,' disallowance or subordination in light of equitable consideration may originally be made" (l. c. 303-05).

To the same effect, see **Re Pennsylvania Central Brewing Co.** (C. A. 3, 1943), 135 F. (2d) 60, 64; **City of New York v. Rassner** (C. A. 2, 1942), 127 F. (2d) 703, 706; **Columbia Foundry Co. v. Lochner** (C. A. 4, 1949), 179 F. (2d) 630, 634; **Torrington Co. v. Sidway-Topliff Co.** (C. A. 7, 1934), 70 F. (2d) 949, 953, 955; 6 Am. Jur., Bankruptcy, Sec. 35; 8 C. J. S., Bankruptcy, Sec. 467; Remington on Bankruptcy, 5th Edition, Vol. 1, Sec. 22.

In the last quoted text, it is said at pages 47-48:

> "The administration of bankrupt estates should be conducted on broad equitable lines, with a view to recognizing and enforcing the rights of all parties, whether legal or equitable. The bankruptcy Court, being a court of equity, looks through the form to the substance of the transaction. It has incidental power to grant any equitable relief which may be necessary in the administration and distribution of the estate: thus, it may order specific performance, it may reform written instruments or decree restitution, even though no offer to return was pleaded."

Courts of Bankruptcy are invested with "such jurisdiction at law and in equity as will enable them to exercise original jurisdiction" in bankruptcy proceedings. Title 11, U. S. C. A., Sec. 11. This jurisdiction is not, however, plenary jurisdiction, but is limited to the power to apply rules and principles of equity jurisprudence in the exercise

of bankruptcy jurisdiction. **Evarts v. Eloy Gin Corp. et al.** (C. A. 9, 1953), 204 F. (2d) 712, 715. One of the classes of jurisdiction of the bankruptcy court in addition to the jurisdiction conferred by Section 2 of the Bankruptcy Act, Title 11, U. S. C. A., Section 11, is that conferred by Section 23 of the Bankruptcy Act, Title 11, U. S. C. A., Section 46 (a), wherein it is provided:

> "The United States district courts shall have jurisdiction of all controversies at law and in equity as distinguished from proceedings under this title, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants."

The District Court sitting in bankruptcy in the exercise of the jurisdiction conferred upon that Court by Sections 2 and 23 of the Bankruptcy Act, 11 U. S. C. A., Sections 11 and 46, should have recognized and applied the universal and age-old equitable principle that it would be shockingly inequitable and unjust to permit the petitioner, as a Reorganization Trustee, to retain for the benefit of the bankrupt estate, both the real estate and the money paid by respondent for the purchase. The Court of Appeals was clearly correct on the record here in reversing the District Court and awarding the respondent, as an innocent and good faith purchaser, equitable relief in his controversy against the Reorganization Trustee concerning the property acquired and claimed by that trustee.

CONCLUSION.

The Petition for a Writ of Certiorari should be denied because the decision of the Court of Appeals for the Eighth Circuit is not in conflict with any decision of this Court

or of another Court of Appeals; the importance of the question presented and its relation to the administration of the National Bankruptcy Act is limited only to the particular litigants here and is founded on the peculiar facts of this case; and the Court of Appeals decision was correct.

Respectfully submitted,—

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